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HETCH HETCHY RESERVOIR SITE

HEARING

BEFORE THE

428

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COMMITTEE ON PUBLIC LANDS UNITED
STATES SENATE

ON THE

JOINT RESOLUTION (S. R. 123)

TO ALLOW THE CITY AND COUNTY OF SAN FRANCISCO
TO EXCHANGE LANDS FOR RESERVOIR SITES IN LAKE
ELEANOR AND HETCH HETCHY VALLEYS IN YOSEMITE
NATIONAL PARK, AND FOR OTHER PURPOSES

WASHINGTON

GOVERNMENT PRINTING OFFICE

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HETCH HETCHY RESERVOIR SITE.

COMMITTEE ON PUBLIC LANDS,
UNITED STATES SENATE,
Wednesday, February 10, 1909.

The committee met at 10 o'clock a. m.

Present, Senators Nelson (chairman), Clark of Wyoming, Gamble, Fulton, Smoot, Flint, Heyburn, Dixon, McEnery, McLaurin, Newlands, Davis, Owen, and Bankhead.

The CHAIRMAN. Gentlemen, we had a hearing on this matter at the last meeting of the committee. I think the gentlemen in favor of the bill had about an hour at that hearing. Now, there are a number of gentlemen who are opposed to the bill, who have come here at their own expense, who would like to be heard this morning, and inasmuch as the time is short and there are so many who desire to be heard, I suggest that we hear them this morning and then give the parties in favor of the bill another hearing at some subsequent time.

Senator FLINT. If that means that the matter is to go over for another week, I shall certainly object, because I would rather submit the question on the House hearings, for the reason that delay is the important thing. I would rather have half an hour and let those who are opposed to the bill have an hour and a half.

Senator NEWLANDS. I do not believe in limiting either side. Let us hear both sides.

Senator FLINT. Not if it is to go over for a week. If we can conclude the hearings this week, I am perfectly willing.

The CHAIRMAN. Those who are opposed to the bill will now be heard, and you will have to select your speakers among yourselves.

STATEMENT OF J. HORACE MacFARLAND, OF HARRISBURG, PA., PRESIDENT OF THE AMERICAN CIVIC ASSOCIATION.

Mr. MACFARLAND. Mr. Chairman and gentlemen, I come before you as president of the American Civic Association, an organization whose membership covers the United States and represents directly and indirectly something more than 100,000 people, who have absolutely no selfish interest in this matter. We come here to-day at our own expense, and we have not been heard in this matter. We believe we have some new facts which should be brought to the attention of those charged with the duty of legislating for the public interest.

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then been reserved, and the result was that they had great floods by the early melting of the snow in the spring, and for the rest of the summer they had little trickling streams down those magnificent falls, the Nevada, the Yosemite, and the Bridal Veil. Now, I said to Mr. Muir, "When you wrote about this in the Century Magazine years ago you spoke of the flower meadows here all through this region; but the ground which we have come across to-day looks more like tan bark than like flower meadows, where you said the flowers were up to the breast of your horse."

He said, "Well, when I wrote about that I was correct. My facts were correctly stated; but the hoofed locusts," by which he meant sheep, "have been driven up here from below by the Portuguese, and have not only eaten out all the brush, but have dug it up with their hoofs."

I said, "Certainly this magnificent scenery here ought to be preserved. It ought to be a national park here, like the Yellowstone National Park, under military supervision."

He said, "Yes; of course it ought."

I said, "Has that ever been attempted?"

He said, "Senator Newton Booth once introduced a bill to that effect, but there was no interest in the matter and it lapsed."

I said, "I think it will be very easy to get Congress to do such a good thing as that, and I propose to you that we start a movement for the Yosemite National Park. If you will write about it I will ask Mr. Gilder, of the Century Magazine, to ask you to write two articles on the subject, first on the 'Treasures of the Yosemite,' to direct attention to the general subject, and, second, on the 'Proposed Yosemite National Park.' If you will indicate the outlines of what that park ought to be, I will go down to Washington to the Committees on the Public Lands and I will urge it upon them."

We carried out that programme exactly. I brought pictures of the Hetch Hetchy Valley, among other things, and pictures of the Tuolumne meadows, and showed them to the Public Lands Committee. It happened that at that time the chairman of the Public Lands Committee of the House was Judge Holman, of Indiana, who came from a district adjoining that of my father, and although they were political opponents, they were very warm personal friends. So I had a sympathetic hearing from Judge Holman, and presented these pictures and Mr. Muir's statements in regard to the necessity of preserving these great things, including, specifically, the Hetch Hetchy Valley. By a reference to the minutes of that committee hearing that fact will be shown. Mr. Muir's articles are in existence, which show that the appeal was made for the purpose of saving the headwaters of the Yosemite waterfalls, so that the waterfalls might no longer be thin and meager.

Then the appeal was made to save the great scenery. Of course a man can not go with a hatchet and knock down that great scenery, but it never occurred to anybody that anyone would want to flood that magnificent valley; destroy it by making an artificial lake of it.

This was in the summer of 1890, and on October 1, 1890, the bill was passed. Now, I have not had an opportunity to see what was said in regard to the matter in that debate. I know the ground of the appeal. The bill was introduced by General Vandever, of California. I know the sentiment of the Public Lands Committee as

expressed to me at the time, and I am sure there can be no doubt that the main idea in making that reservation was to preserve the great scenery there, and to make it accessible to the public.

Senator NEWLANDS. Is the reserve only the part included within these red circles on the map?

Mr. JOHNSON. No; the watershed is represented by the blue lines here. In actual square miles it is more than one-half of the Yosemite National Park.

So much for the reason why we are here, and for some light on the intentions at the time of the making of this reservation.

We now come to the myth of the necessity of San Francisco to have this valley, to destroy this great wonderland. We are told here that if we say anything about the Spring Valley Water Company, which now gives the supply of water to San Francisco, we are aiding and abetting a great grinding monopoly. I have not the faintest interest in the Spring Valley Water Company, and not one of us who appear here have any interest in it which has not been disclosed. I believe the attorney of the Spring Valley Water Company is here, but his position has been disclosed, and as representatives of the public we refuse to be put out of court on the ground that we happen to travel along the same lines as the argument of the Spring Valley Water Company.

Now, if this is a grinding monopoly there are three reasons, in my mind, that have to be considered. I do not know whether it is a grinding monopoly or not, and I do not care, except that I do not wish any city corporation to be in the clutches of a grinding monopoly, nor do I wish a grinding monopoly to be in the clutches of the city. Here are three things that tend to prove that it is not a grinding monopoly, and that therefore there is no necessity existing on that score. The first is that the water rates are not fixed by the company, but by the city authorities and reviewed by the courts. If they are fixed too low, the Spring Valley Water Company has the right of appeal. If they are fixed too high—but nobody has ever claimed that they were fixed too high by the supervisors. Now, you can not have a very grinding monopoly when it does not fix the water rates.

Second. The Spring Valley Water Company, as I understand, has offered to sell at a price to be fixed by arbitration.

Third. There exists under the principle of eminent domain the right to condemn the property of the Spring Valley Water Company. That being the case, no sort of standing can be had in court for the gentlemen who claim this is a monopoly.

Senator CLARK, of Wyoming. Is that a general statute allowing condemnation?

Mr. JOHNSON. I think it is. If it is disputed, I am not aware of it.

Senator CLARK, of Wyoming. I call attention to it because it has been disputed.

Senator FLINT. It always has been disputed.

Senator DIXON. On what authority do you make the statement that the water company has agreed to arbitrate the price? That is disputed by the representatives of San Francisco here, as I understand it.

Mr. JAMES D. PHELAN. They have refused to arbitrate.

Mr. JOHNSON. Now, to close my remarks, not only is the necessity a myth, but the idea that the lake is to be improved is an illusion. I

will not go further into that, because it is absolutely impossible to improve that valley by destroying it. It never can be restored to the beauty which it has.

Gentlemen come here with even such trivial objections as that there are mosquitoes in this valley. Did anybody ever find a Sierra valley that did not have mosquitoes in it? There are mosquitoes in the Yosemite, in the Alps, in the Adirondacks—mosquitoes everywhere—and such trivial objections as that have no bearing on the question of maintaining this magnificent scenery.

Senator FULTON. Are you going to take up the proposition as to where they can get a supply of water elsewhere?

Mr. JOHNSON. No, sir; I am not going to take that up, because I have nothing to do with it; but I maintain that neither the Secretary of the Interior nor Congress has at any time made an impartial or thorough investigation of that question, and that in the light of that fact, that no more care has been taken by the Secretary of the Interior in this matter, Congress should make its own investigation.

Senator FULTON. I think Mr. Hitchcock, when he was Secretary, held otherwise, did he not?

Mr. JOHNSON. Mr. Hitchcock declined to grant this permission, as also did Mr. Noble, Secretary of the Interior under President Harrison. In these days of conservation we are apt to forget that there were great men before Agamemnon. We forget that before this administration began there were others who were interested in this great question. Nobody has praised this administration more highly than I, and nobody appreciates more highly than I the colossal service it had done in the matter of the conservation of natural resources. It is the one thing that five hundred years from now will stand out in the history of this administration, but I can not go with the administration to the extent of destroying this valley for the purposes proposed. This administration has roused public sentiment on this matter, and I should be very sorry if anything that I have said here to-day in regard to this, because I object to the position of the President and of Mr. Pinchot and of Mr. Garfield in this particular matter, should be taken as an attack in any way on the general policy of those gentlemen.

Senator SMOOT. Mr. Johnson, do you intend to discuss the question as to whether San Francisco is able to secure water other than from the Hetch Hetchy Valley?

Mr. JOHNSON. I think we are not put upon our response in that matter. I think that is sufficiently answered by the report of Colonel Mendell, dated 1876-77, in which he called attention to thirteen other sources of water supply.

Senator FULTON. Is that report in print?

Mr. JOHNSON. Oh, yes; it is to be had in the Library of Congress. Colonel Mendell was a retired engineer of the United States Army, now dead. He was appointed by the city of San Francisco for the purpose of making this investigation. His report shows thirteen other available sources. Also I shall not go into the question of what the Spring Valley Water Company can do in this matter. All I say is that their claims have not been investigated, and, indeed, the Secretary of the Interior has said, "I do not need to investigate or to consider whether there are other sources or not." I am very glad indeed to find that this honorable committee does wish to investigate what the Secretary of the Interior does not wish to investigate, and

that it does not intend to fall back on the idea that anybody who lives within 200 miles or even nearer of a given water supply is entitled to take anything he wishes at any expense.

Senator CLARK, of Wyoming. In view of the great success of the present policy of conservation, and the great attention that has been paid to it by the present administration, would it not be fair to assume that, being correct in the other matter, they were correct in their view of this particular matter?

Mr. JOHNSON. I think not. I think that would be a very risky thing to assume about the conduct of anyone.

Senator NEWLANDS. Mr. Johnson, would you say that no proper investigation has been made whether or not an ample and convenient water supply could be secured for the city of San Francisco outside of Hetch Hetchy?

Mr. JOHNSON. Yes.

Senator NEWLANDS. No investigation made by the Government?

Senator FULTON. By the Secretary of the Interior.

Senator NEWLANDS. Would you regard it as a wise solution of this matter to have that question referred to the Corps of Engineers of the army, with a view to a report upon that question?

Mr. JOHNSON. I should think that would be very admirable, if in addition to that there were included lay members who were impartial, not living in California, members not identified with either side of this controversy, but men of such high standing as to render their appointment a guaranty of impartiality.

Senator NEWLANDS. There are a number of organizations in the country that are devoted to questions relating to the preservation of natural scenery and the preservation of monuments, and so forth, and, as I understand it, the most of them have expressed themselves against the appropriation of Hetch Hetchy Valley for this purpose. Would you favor the appointment by the President of a commission composed of men who have interests and tastes of that kind to report upon the question as to whether this work will seriously impair the scenic beauty of that valley? I understand that is a question that is controverted.

Senator FULTON. How would you have that commission appointed?

Senator NEWLANDS. I would refer it, I think, to the Council of Arts recently appointed by the President.

The CHAIRMAN. I want to remind the Senator from Nevada that it is doubtful whether in the next administration we shall have so many commissions as we are having now.

Senator NEWLANDS. It is necessary always, of course, in making an investigation to appoint either some one man or some body of men, I do not care what you call it, whether a committee or a commission.

Senator FULTON. I did not suppose it was possible for the fertility of the human mind to discover another commission.

Mr. JOHNSON. I should say that in this matter I consider that the President of the United States is already thoroughly committed on one side of this proposition. In fact, he is the one chiefly responsible for it.

Senator NEWLANDS. But the appointment would probably be made by the next President.

Mr. JOHNSON. I should heartily favor, and I think we should all heartily favor, the appointment of an impartial commission or body

of men for the purpose of making a thorough investigation of this matter.

Senator CLARK, of Wyoming. You spoke of the President. Has the President made any utterance upon this proposition?

Senator HEYBURN. Let me suggest to you, Mr. Johnson, that we have such a body in this committee.

Mr. JOHNSON. If this committee will go to the Hetch Hetchy Valley, the people of San Francisco will not get their water supply from this region.

Senator CLARK, of Wyoming. You spoke about the President being thoroughly committed to this proposition. Has the President committed himself in any way to it, so far as his public utterances are concerned, that you know of?

Mr. JOHNSON. No; I can not say that he has publicly committed himself to the matter. I know that he has declined to interfere in the matter, because he has so stated to me.

Senator CLARK, of Wyoming. He has declined to interfere with the ordinary administration of the affairs of the Department of the Interior? Is that it?

The CHAIRMAN. Declined to overrule Secretary Garfield?

Senator CLARK, of Wyoming. Declined to overrule Secretary Garfield?

Mr. JOHNSON. Yes; I think so.

Senator FLINT. Have you ever been in the Hetch Hetchy Valley?

Mr. JOHNSON. No, sir.

Senator FLINT. You only know of it from hearsay?

Mr. JOHNSON. Only from hearsay and photographs; and I will call attention to the fact that photographs of natural scenery always diminish the effectiveness of that scenery. A photograph of this Capitol makes a less effective view than a drawing of it, because the perspective of a photograph is incorrect, and it tends to flatten and diminish the relative size of distant objects.

Senator SMOOT. Do you know whether there is anyone here to speak in relation to the ability of the Spring Valley Water Company to develop a greater water supply? The reason I ask this is that in the hearings a week ago to-day there was a statement made by Mr. Phelan that he thought that they could develop 5,000,000 gallons more water and perhaps 10,000,000. I notice here a statement from Mr. C. E. Grunsky, former city engineer of San Francisco, stating that they can develop a yield of 109,000,000 gallons more. Is there anyone here who can answer that question?

Mr. EDWARD J. McCUTCHEN. The Spring Valley Water Company is represented here.

Mr. MACFARLAND. Those who are here as the opponents of the measure from the standpoint of public benefit have the least possible knowledge of, or relation with, the Spring Valley Water Company.

Senator FULTON. We understand that.

Mr. JOHNSON. All we say is that the claims of the Spring Valley Water Company are one thing to be considered here, and they have not been considered.

Senator FULTON. We are going to consider that.

Senator SMOOT. The reason I spoke as I did was that I was not informed whether the Spring Valley Water Company had a representative here, and I want to say that the question which I asked is

one of the important questions in my mind. I want somebody to answer it.

Mr. JOHNSON. One thing very pertinent is that the Merchants' Association of San Francisco had a poll as to whether or not they should buy the Spring Valley Water Company, and by an overwhelming vote—I think something like 25 to 1—they decided in favor of it.

Senator SMOOT. Six to one.

Mr. JOHNSON. I am not speaking of that vote of November 12, but I am speaking of the Merchants' Association, men supposed to know whether this was a good water supply or not. People have gone so far as to say that the water supply of San Francisco is not good. The Merchants' Association voted overwhelmingly for the purchase of the Spring Valley Water Company. Now, what I say is, until you have demonstrated that there is not other adequate water supply for San Francisco you can not come to us and ask us to dismember a national park, solemnly and unanimously dedicated—I do not believe there was a vote against it in 1890—solemnly dedicated to the people for a specific purpose. In fact, it was dedicated to the whole world. Until you have demonstrated that there is no other adequate water supply for San Francisco you have no right to ask us to accede to this proposition.

Mr. MACFARLAND. Mr. Chairman and gentlemen, I will next introduce Mr. Henry E. Gregory, official representative of the American Scenic and Historic Preservation Society, a national body.

STATEMENT OF HENRY E. GREGORY, ESQ., OF THE AMERICAN SCENIC AND HISTORIC PRESERVATION SOCIETY.

Mr. GREGORY. Mr. Chairman and Senators, the American Scenic and Preservation Society is a national society incorporated in New York for the protection of natural scenery and the preservation of historic landmarks. Its president is Mr. George F. Kunz, of Tiffany & Co., a distinguished mineralogist and expert in geology. The honorary president is Mr. J. Pierrepont Morgan, who was elected honorary president because of his interest in the preservation of the palisades of the Hudson. This society was instrumental in effecting that, and also in effecting the partial salvation of Niagara. It is also interested indirectly in all works of that nature, not only in New York and in the East but in the West and the South and everywhere throughout the length and breadth of the land. Its aims, therefore, are national. It has no personal or corporate interest in any enterprise mentioned here. The fact that Hetch Hetchy is 3,000 miles away does not diminish its interest. On the contrary, it increases it, because we recognize the fact that the Yosemite region is a national asset of priceless value, in which every citizen of the United States is or ought to be interested, and of which Congress holds the trusteeship, of immense importance, a responsibility and a trusteeship which it should and will be very careful not to violate in the slightest degree.

The object of this society that I represent is to encourage and maintain the rights of the people to the contemplation of the sublimity and beauty of natural scenery, and to oppose proposed legislation, of whatever sort, from whatever source, corporate or private, that will in any way interfere with the right of the people to enjoy the wonders and marvels of natural scenery in this country. We regard these

marvels of natural scenery as the gift of God. Milton said, "You might as well kill a man as kill a good book." You might as well destroy a nation, you might say, or thousands of men, as to destroy a natural work of this kind; because when once you begin the work of destruction there is no hope of restoration, there is no prospect of reproduction. It is gone forever. You destroy one of the works of God Himself when you destroy one of these marvels of natural scenery which are the great glory of our country. The glory of our country is not commerce, is not business, is not our national revenue, but the scenery which God has given us. That is the supreme glory of this country, or one of them at least. And in this era of conservation I lift up my voice in behalf of the preservation of this magnificent scenery, which, if once partially destroyed, can not be restored.

You may search the classical literature of antiquity for descriptions of scenery which equal or approach the description of the Yosemite Valley. The garden of the Hesperides, the garden of Alcinous as described by Homer in the *Odyssey*, the home of the Nymphs as described by Virgil, with the Garden of Eden thrown in, as described by Milton—all of them together would not equal the description of the Yosemite National Park. So, I say, I represent the very highest enlightened sentiment of this country in coming here on behalf of this society to protest against the diversion of this beautiful valley from the sacred purpose to which it was consecrated nearly twenty years ago.

I only repeat what Mr. Johnson has said when I say we all agree that San Francisco is entitled to an abundant water supply. We do hope they will have it for the next fifty years. They are entitled to it, and the only consideration that makes us come here to interfere with their plans is, just as I have stated and as Mr. Johnson has stated, that scenery of this character should be sacredly preserved by Congress as the representatives of the whole people of the great Republic.

Senator DIXON. Have you ever visited Hetch Hetchy yourself?

Mr. GREGORY. Never, sir; but I am none the less interested in it.

Senator DIXON. Do you know the conditions there in the valley?

Mr. GREGORY. I know the marvels of scenery that are congregated there, and I know the sacred trust of Congress to protect that scenery.

Senator DIXON. But this especial valley; what is there peculiar about that?

Mr. GREGORY. It has beautiful streams and wonderful—

Senator FLINT. How many streams?

Mr. GREGORY. I can not give you the facts about that. It is not necessary for me to go and make a personal investigation of this wonderful valley in order to be convinced that it is one of the most beautiful in the world. Everybody will admit that. I am not a topographical engineer nor a geologist.

Senator DIXON. What is there special about this valley that would result in such great devastation of the natural resources by making it a lake instead of a valley floor as it is?

Mr. GREGORY. It would destroy the floor of the valley for camping parties; and once it is made a reservoir you must prevent the public from camping near it, in order to avoid contamination; and so you sequester not only the land of the lake itself, but you sequester immense areas all around it.

Senator FLINT. Suppose God had created a lake there by throwing up a great granite ledge at the bottom of the valley. Would you not be here to-day asking us not to take down that ledge and not make a dry valley there to be used for agriculture?

Mr. GREGORY. It is very likely we would not place ourselves in the position of trying to improve upon the works of God.

Senator FULTON. What you are appealing to us to do is to preserve nature?

Mr. GREGORY. Yes.

Senator SMOOT. If it was a ledge, is it not more than likely that the approaches to the valley would be entirely different than they are to-day?

Mr. GREGORY. Yes.

Senator SMOOT. As I understand it, the approaches to the valley to-day are from all directions, and if made into a lake, as proposed here, for water supply, it will interfere with those entirely, and travel will have to go an entirely different way?

Mr. GREGORY. I think that is quite correct, sir.

Senator NEWLANDS. Are the walls of this valley upright and perpendicular, so that if the bottom were covered with water then there would be no land to stand upon from which any view of the natural scenery could be secured?

Senator FLINT. They propose to construct a road around the entire reservation.

Mr. GREGORY. I would not want to camp on that road.

Senator DIXON. By camping up at the top you could see the scenery. The proposition is to create a road a hundred feet above the reservoir.

Senator SMOOT. The walls of the canyon are in many places perpendicular.

Mr. MACFARLAND. Mr. Sampson is absolutely familiar with the scenery of the valley, and he will give you a description of it.

Senator FULTON. How could they put a road there that would be convenient to travel, along the walls that are perpendicular, and, I understand, 2,500 to 3,000 feet high?

Senator FLINT. They have done that in the Yosemite. There is a road in the Yosemite Valley.

Senator FULTON. It means at least disturbing the natural conditions.

Senator DIXON. I am informed that there is a hog ranch in this Hetch Hetchy Valley at this time.

Mr. GREGORY. I can not say as to that, but if you will allow me to finish, Mr. Sampson will answer all these questions. He has been there and knows the whole situation.

Senator FLINT. Is there anything special to be preserved in the Hetch Hetchy Valley different from thousands of other valleys in the country?

Mr. GREGORY. Oh, yes; I should say the scenery there is so stupendous and so unprecedented, so unapproached in this country, that anything that looks like desecration of it ought to be at once prevented.

Senator FULTON. Where is the Tuolumne Valley as compared with the Hetch Hetchy? Is it a part of the Hetch Hetchy?

Mr. GREGORY. It is a part of the Yosemite reservation. I am very much surprised that the people of California themselves are not more zealous in defending this valley, because it is of immense value to the State. Thousands of people go there and spend money in the State. Thousands are coming there—

Senator FLINT. Do you say thousands go to Hetch Hetchy every year?

Mr. GREGORY. So I am informed.

Senator FLINT. Who gave you that information?

Mr. GREGORY. I have read it.

Senator FLINT. That is the most astonishing thing I ever heard.

Senator NEWLANDS. I presume you mean to the Yosemite Valley?

Mr. GREGORY. I mean to the whole region.

Senator FLINT. That is altogether different.

Mr. GREGORY. And the whole region is a great sanitarium, and will be more and more as time goes on. At any rate it seems to me that it is a great asset to the State alone, and that the people of the State ought to be very careful to protect it. Local interests and requirements at any rate, it seems to me, should not be permitted to control where the interests of the State and the nation and of mankind are supreme. It is easy to say that the proposed reservoir will not seriously impair the scenery, but it seems to me that the probability is that once admitted it will be the beginning of injury and desecration and defacement. Once permit this deviation from a sound protective policy in a matter of scenery and there is no telling where the end will be. It is a wise and prudent policy at once to prevent this introduction of an apparently harmless enterprise to so wonderful a valley. Surely utilitarian and commercial enterprises never as a rule should be permitted to secure a foothold in public reservations which are held in trust for the benefit of the people. And now, when public sentiment more than ever is enlisted in favor of protecting and perpetually safeguarding great natural scenery, it would certainly be deplorable should this Congress enact this resolution.

While the Hetch Hetchy Valley is within the boundaries of California, it belongs to the nation. The East is interested in it, the South is interested in it, the Middle West is interested in it, and Congress, representing the people, must be conscious of its great responsibility. Apparent immediate advantages and the advantages of a special interest or special locality should be subordinated to the wider and greater benefit to be secured by the preservation of the valley for the whole nation and mankind in general. The commercialism of the time, the dominance of business and utilitarian motives should be resisted and counteracted. Natural scenery is one of the most important assets of the nation, and quite beyond computation and inexpressible in pecuniary or fiscal terminology. This country is more interested in education than any other. Natural scenery is of immense importance as an educator of the people and as a restorer and liberator of the spirit enslaved by Mammon.

Mr. MACFARLAND. The gentleman who is next to address the committee has the distinction of having visited the Hetch Hetchy Valley and camped in it, in which he differs from Mr. Secretary Garfield and Mr. Pinchot, who have been warm supporters of the proposition. I have the pleasure of presenting to you Mr. Alden Sampson, of New

York, who represents here some three-quarters of the Sierra Club of San Francisco.

Senator FULTON. I do not understand that Mr. Secretary Garfield or Mr. Pinchot were ever in the Hetch Hetchy Valley.

Mr. MACFARLAND. You are correct in that, Senator. They have never been there. Mr. Sampson will tell you of the physical features of the situation.

STATEMENT OF ALDEN SAMPSON, ESQ., OF NEW YORK CITY.

Mr. SAMPSON. Mr. Chairman and gentlemen, I have no right to address the committee unless I know something about this subject and can contribute some matter of value. I have spent about half my life in the Rocky Mountains and the Sierras, and in one period of twenty years I spent sixteen years in the Rocky Mountains. At that time I was hunting big game. I thought it was the passion for hunting big game that took me there; I was mistaken. I have discovered since that it was the irresistible fascination of the mountains and of the forests that attracted me to that life, and that the killing of the big game was merely a by-product.

This last summer it happened that by chance I spent forty-two days in the saddle in the Yosemite National Park, and a very considerable portion of that time on the Tuolumne watershed, which is the more interesting portion of the park.

For the moment, leaving out of consideration the Yosemite Valley itself and Hetch Hetchy, when you get up onto the great plateau region which lies some 3,000 feet above the floor of the Yosemite Valley, then the portion in the northern part of the Yosemite Park is more interesting than in the southern part of the Yosemite Park. I might describe the first time that I came into the Hetch Hetchy Valley.

When I was a boy about 12 or 14 years old I read Mayne Reid's *Desert Home*, with which some of you may be familiar, in which he gives a very fascinating description of a valley lying at a considerable depth below the great plain in which the people in the story were traveling, a valley through which a river ran, and into which valley these people trekking with their prairie schooner made their entry, to find there, according to Mayne Reid's style of narration, about everything desirable in the vegetable world and in the animal kingdom that exists in North America and in the adjacent islands. It was to me a very fascinating narrative. When I stood on the edge of Hetch Hetchy five years ago and looked down into it, I said to myself, "Here is the *Desert Home*."

Before me lay a great valley, 4 miles long and half or three-quarters of a mile wide, with broad meadows, and groves, and a beautiful river, exactly as had been described in this romance of my youth. Then, as a camping ground, it had an extraordinary attractiveness. The river itself, the Tuolumne River, is more beautiful than the Merced River that flows through the Yosemite Valley. It is the most beautiful river, in any valley, that I ever saw. Its peculiar characteristics are wonderfully interesting. The color of the water itself as it flows in the channel is very attractive indeed, and the banks are clothed with oaks and cedars; very splendid oaks, 4 or 5

feet in diameter, and beautiful old cedars, with scattered deciduous trees. The mixture of those trees along the banks constitutes a feature that simply can not be excelled in this country. The Yosemite has that, also, in a different way, but the Yosemite is getting overcrowded. Indeed, it is only a question of opening a road into that valley, which may be accomplished with perfect ease, when a great number of people will go not only to the Yosemite, but to Hetch Hetchy. Having seen the Yosemite, one will go with renewed and increased interest to see something of a similar nature, but different, that may be observed in the Hetch Hetchy Valley. My own experience has been that, starting out from the Yosemite, I enjoyed that tremendously, and I have done it a number of times. Then I would go on a six weeks' cruise, with nobody to do the menial work for me. I attend to that myself, doing my own cooking and packing; but when I come back into the Yosemite Valley, at the end of six weeks, it is tremendously more impressive and inspiring than when I started out. It is exactly as if a veil had been lifted from between me and the scene before which I stood. The reason of that is that the human brain is so constituted that it can absorb these features of natural grandeur only gradually. You have got to get into training. You have got to get your mind appreciative and keen; and as you see the features of glacial action, as you see the other valleys, with cliffs and the adjacent mountains, then by contrast, and having in mind the features of beauty which you have already been dwelling upon, when you come back and see the Yosemite, you more fully appreciate it.

Now, having gone to the Yosemite, having seen these other features of the Yosemite National Park, and then going to the Hetch Hetchy you enjoy it ten times more than if you had not previously seen the Yosemite Valley. This is something that you can not do offhand; you have got to educate yourself up to it. (That is a kind of academic phrase which I dislike.) You have got to let your brain have time to absorb those features of natural beauty. It simply can not be done in a hurry. It is so in reference to other things.

Suppose a man wants to learn boxing. Can he do that by giving his whole time to it for a week? Not on your life. He has got to take time to do it. He has got to take one lesson a day for twenty or forty or sixty days, and then he gets results. That is the way the human brain acts. Now, it is exactly the same with natural scenery. A man has got to take his time to accomplish the best results. When you go out of the Yosemite and to Hetch Hetchy you go into a valley which is second only to the Yosemite. There is not a valley in this country that can compare with it except the Yosemite.

Senator FULTON. You mean the Hetch Hetchy?

Mr. SAMPSON. The Hetch Hetchy Valley.

Senator DIXON. What is the altitude of Hetch Hetchy?

Mr. SAMPSON. About 2,700 feet, I think.

Senator FULTON. The floor of it?

Mr. SAMPSON. Yes.

Senator FULTON. Tell us something about the walls. Are they perpendicular?

Mr. SAMPSON. Very steep, indeed.

Senator FULTON. Are there numerous falls down the sides of the canyon?

Mr. SAMPSON. There are superb falls. One of those falls, the Hetch Hetchy Fall, is said by John Muir to be the finest waterfall he ever saw. John Muir knows as much about mountains as any man that ever lived in America or that ever lived anywhere—a man who has very fully the endowment of a poet of a very high order and the equipment of a naturalist as well. He is a great botanist and geologist—a man who knows as much about glacial action as any man in the world——

Senator FULTON. I think we know John Muir.

Mr. SAMPSON. John Muir says that Hetch Hetchy Fall is the finest one he ever saw.

Senator DIXON. What is the height of it?

Mr. SAMPSON. Seventeen hundred feet, I think, and I have given you John Muir's opinion of its beauty.

Now, in reference to the road, if you build a road around the walls of Hetch Hetchy, then people can only travel along that road. They can not camp on the road. They are really excluded from living with this park and becoming acquainted with it, and absorbing its beauty and making it a part of themselves.

Senator FULTON. Will the road interfere with these waterfalls?

Mr. SAMPSON. No; I believe a road might be run around the south side without interfering with the waterfalls which are on the north wall.

Senator DIXON. I understand it is proposed that the water in the lake should not reach within a hundred feet of the bottom of the falls, where the water falls into the valley.

Mr. SAMPSON. That I can not say; but you might as well have a person pointed out to you, and have it said, "There is the most delightful person in the world." This you must not take on hearsay; if you are going to make a person an actual possession of your own you have got to live with that person and become acquainted with him.

Senator FULTON. Is it not a fact also that the beauty of the falls can only be appreciated at the best from a view from the bottom of the canyon, and off at some distance, rather than being right up against the falls?

Mr. SAMPSON. Yes; and you must have the opportunity to move around and view the falls from different places.

Senator FLINT. Do you mean to say that you can see those falls some distance away?

Mr. SAMPSON. You can see them from the floor of the valley at some distance.

Senator FLINT. How far away from the falls can you get a view of them?

Mr. SAMPSON. I think about half a mile—something like that. Now, this does not merely relate to conditions in this country as they exist at the present time. There is in Europe an organization known as the German and Austrian "Alpenverein," and there must be something like 70,000 men who belong to that organization who go to Switzerland and other mountains every year. Probably there are something like 125,000 people belonging to similar organizations in Europe who go in for that sort of recreation and physical refreshment. As a matter of fact, Americans are too lazy to do it as yet, and they do not do it, but they will get educated up to it finally. Going out in

an automobile is not all the exercise that a normally constituted person necessarily craves. The time will come when Americans will feel that it is a matter of pride to use the muscles that God gave them and to show that they are worth using, and to have the will power to use them. It will be a delight and a satisfaction to do this. The time will come when there will be many thousands of people in our country who will take this form of recreation.

We must also consider that there will be hotels there; there will be a great traveling public that will come in. There will be roads and trails in every direction, with small hostelries where people may be put up overnight, and there will be millions of people in the future who will enjoy the satisfaction of going through the park.

Now, before I close I want to say one word about the country that lies above the Hetch Hetchy Valley. To me the most fascinating and interesting thing of all is when you get onto that plateau country above the Hetch Hetchy. That is a great country that has been planed off by glacial action. There was an ice mantle there 3,000 to 5,000 feet thick over that whole country, just as there is to-day over Greenland. Through millions of years the country was thus rounded off by the power of glacial action. The result is, as you look down on it, in many places it is pretty nearly all granite, with only a tree here and there. The meadows, where horses can get sustenance, are very scattered—very small. They are only in the pinch of the hills—little narrow valleys right on the water courses, and, as I say, very scattered.

Senator FULTON. You are speaking now of what locality?

Mr. SAMPSON. Of the plateau above the Hetch Hetchy, in this great watershed of 500 square miles that would be tributary to and subservient to Hetch Hetchy reservoir if created.

The CHAIRMAN. I should like to hear you on this: It was suggested the other day at the hearing that the effect of creating this reservoir there would be to make a fine mountain lake, and that it would not impair the usefulness of the park; that you would simply have a fine lake, and not destroy the waterfalls.

Mr. SAMPSON. It would injure the country tremendously for travelers, because the grass in the park is a very scarce article. You have there now three great camping grounds—the Yosemite, Hetch Hetchy, and the Tuolumne Meadows.

Senator FLINT. Do you say the grass in there is very valuable?

Mr. SAMPSON. I certainly say so, for the purposes which I have stated.

Senator FLINT. What is it used for now?

Mr. SAMPSON. It is used for camping purposes.

Senator FLINT. Is it not used for feeding hogs?

Mr. SAMPSON. No; there is not a hog in there.

Senator FLINT. You are sure of that?

Mr. SAMPSON. Yes. The "Hog anch" is 5 or 6 miles outside of that.

Senator NEWLANDS. When you speak of the park, you refer to the entire reservation?

Mr. SAMPSON. The Yosemite National Park.

Senator NEWLANDS. Which includes a large area outside of the valley itself?

Mr. SAMPSON. Yes.

Senator NEWLANDS. And it is in contrast to this vast area that you refer to the value of these spaces of grass?

Mr. SAMPSON. Yes; because grass in the Yosemite National Park is a very scarce article. There are only pinches between the hills here and there. If they establish a reservoir there, they are not going to have campers on the little streams that feed that reservoir, and the practical consequence will be that the Tuolumne meadows, which are a great camping ground at the present time, will not be used for that purpose. Camping will not be permitted in that valley. There is a valley 15 miles long; one great meadow, absolutely the most beautiful meadow in the whole Sierras. When you go there you get those great, broad effects in flowers that you do not see anywhere else.

Senator GAMBLE. You think they will not be allowed to camp there on account of the danger of pollution of the water?

Mr. SAMPSON. Yes; on account of the danger of pollution of the water. If you cut out those great camping grounds, Tuolumne meadows and Hetch Hetchy, you deprive campers of their most valuable opportunity. The little bits of scattered meadows are so small and restricted that they barely answer the present requirements.

Senator GAMBLE. How far are the Tuolumne Meadows from Hetch Hetchy?

Mr. SAMPSON. Tuolumne Meadows are about 20 miles above.

Senator GAMBLE. And they would be on the watershed?

Mr. SAMPSON. They would be right square on the watershed. Now, that canyon is a tremendously interesting feature in itself. As quick as the roads can be put in there or established one of the most interesting things in the Sierra will be made more accessible. At present it is a rather difficult knapsack journey for a mountaineer, but it is only a question of time, and a very short time, before a trail will be built up through Tuolumne Canyon.

Senator GAMBLE. What is the character of the country north, in the Tuolumne Valley?

Mr. SAMPSON. There are scattered lakes and meadows. The surface has been rounded off by glacial action.

Senator GAMBLE. Is it a country of special beauty?

Mr. SAMPSON. It is a country of wonderful beauty.

Senator GAMBLE. Naturally that country would have to be reserved to prevent pollution of the water?

Mr. SAMPSON. It would; and if the people are kept off the streams they are kept out of the region.

Senator NEWLANDS. Assuming that that valley is changed into a lake, are there any benches in those precipitous walls on either side where camping parties could collect, assuming that this question of the pollution of the waters could be prevented in some way?

Mr. SAMPSON. No, sir; there are not.

Senator NEWLANDS. It is said that there is a space, about a hundred feet above the level of the water, for a road around the entire valley, so that a road can be constructed there.

Mr. SAMPSON. It would cost money, but it could be built. It would be a narrow road, and there would be no fun in having only a look in there from a road. You would not get great satisfaction from that compared with living in the valley for a time.

Senator NEWLANDS. From what point do you get the greatest satisfaction in viewing the valley—from the floor or from the cliffs?

Mr. SAMPSON. Undoubtedly from the floor of the valley, every time.

Senator GAMBLE. How much of the stretch of valley is it proposed to cover with the reservoir?

Mr. SAMPSON. To cover it all; to drown the whole thing.

Senator GAMBLE. A distance of how many miles?

Mr. SAMPSON. It is nearly 4 miles long.

Senator GAMBLE. And from half to three-quarters of a mile wide.

Mr. SAMPSON. Yes. Of course, it is an ideal site for a reservoir. There is no engineer in the world who would not like to build a dam there. It would be a most interesting feat in engineering.

Senator HEYBURN. Are you acquainted with Lake Eleanor?

Mr. SAMPSON. Yes.

Senator HEYBURN. It is included in this proposed grant?

Mr. SAMPSON. Yes.

Senator HEYBURN. What do you know of Lake Eleanor?

Mr. SAMPSON. It is very beautiful; but in reference to that, you see they are not going to develop Lake Eleanor unless they are sure that they can have Hetch Hetchy also.

Senator NEWLANDS. Is Lake Eleanor below Hetch Hetchy?

Mr. SAMPSON. It is to the northwest.

Senator NEWLANDS. Is there any objection to the use of Lake Eleanor?

Mr. SAMPSON. No; but they will not construct their waterworks if they can have only Lake Eleanor. They will only do it if they can have Hetch Hetchy.

Mr. JOHNSON. There is no objection to their taking water if it does not interfere with the national park.

Senator FULTON. What does this name Hetch Hetchy mean?

Mr. SAMPSON. It is an Indian word; I do not know the meaning of it.

Representative KAHN. It means "mighty wind."

Mr. SAMPSON. In the discussion of possible water supplies available for the use of San Francisco, no mention has been made of the large number of lakes on the upper waters of Tuolumne River. With a very considerable portion of this country I am myself personally familiar. If one will take the topographical maps of the Geological Survey he will see that many opportunities exist there for the impounding of water.

Following up on the south side of the Tuolumne River, 14 miles above Hetch Hetchy, are the Ten Lakes, at an altitude of 9,000 to 9,500 feet. Then a small lake at the head of Cathedral Creek, 8,800 feet elevation; McGee Lake, at 7,900 feet; a lake at the head of Budd Creek, at 10,000 feet, emptying into Tuolumne meadows; three lakes on Unicorn Creek; two lakes on Rafferty Creek, between 10,000 and 10,300 feet; two lakes on Ireland Creek, between 10,500 and 10,700 feet; on McClure's Fork, two lakes, between 10,500 and 11,000 feet; on the headwaters of Mount Lyell Fork and under the McClure glacier, three lakes, between 10,700 and 11,000 feet; a meadow below Donohue Pass, 10,100 feet; on Kuna Creek, three small lakes, 10,700 to 11,500 feet. All the above on the Mount Lyell Fork of Tuolumne River.

Then following the Dana Fork of the Tuolumne River, on the South Fork of the same, five lakes at an elevation from 10,500 to 10,896 feet; on the stream from the northeast of Moraine Flat, and emptying into the Dana Fork 2 miles above Lambert Dome, five lakes at an eleva-

tion from 10,000 to 10,700 feet; Dog Lake, 9,240 feet; on Conness Creek, Young Lake and two smaller lakes at an elevation of 9,800 to 10,100 feet; another lake on the North Fork of Conners Creek at an elevation of 9,900 feet; behind Wild Cat Point, a lake at 9,448 feet; Rodgers Lake at 9,000 feet; Neall Lake, Doe Lake, Telula Lake, Shamrock Lake, Surprise Lake, and Sister Lake, 9,500 to 10,000 feet; the large Benson Lake, 8,000 feet, and also on Piute Creek, Table Lake and two other lakes at an elevation of 6,000 to 7,500 feet; the long Kerrick Meadow, 9,500 feet; a lake on Tilden Canyon, 8,100 feet; on Falls Creek, Vernon Lake, at 6,600 feet, Branigan Lake at 7,400 feet; on Jack Main Creek a lake at 7,800 feet, on the branch to the west a lake at 8,900 feet emptying into Jack Main Creek, the big Tilden Lake, 2 miles long, at 8,800 feet, and a lake above at 9,600 feet; at the head of Jack Main Canyon, a lake at 9,700 feet; on Frog Creek, two lakes at 7,500 feet, Laurel Lake at 8,600 feet, and Bearup Lake at 7,600 feet; on Eleanor Creek, Lake Eleanor at 4,694 feet; above that on the West Fork, three lakes at about 7,000 feet; four lakes on Eleanor Creek between 6,000 and 6,500 feet; two lakes at 8,900 feet; the big Twin Lakes at 8,800 feet; on Kibbie Creek, Kibbie Lake at 6,385 feet; on Cherry Creek, a lake at 7,500 feet; on the east fork, a big lake at 8,200 feet; on the north fork, Emigrant Lake, over 2 miles long, at 8,708 feet; above that, three lakes at 8,500 to 9,000 feet; three lakes at 8,000 feet; a lake at 8,300 feet; on the West Fork of Cherry Creek, three lakes at 8,400 to 8,700 feet; then in upper Relief Valley, one lake.

It is to be said of this extraordinary number of lakes, that many of them are in a country of glaciated granite, where the solid rock foundations for possible dams lie exposed. From among these lakes, many of them of considerable size, doubtless selection could be made of a number suitable for storage reservoirs. These would be filled annually at the time of the spring freshet, and the waters could be impounded until required. At the proper time the requisite amount of water could be released, and, in accordance with the provisions of the laws of California, again taken from the river below Hetch Hetchy.

Besides these lakes on the upper waters of the Tuolumne River there are eight possible storage reservoirs mentioned in the Report of the Geological Survey of 1891 (Report on Irrigation, pp. 26-35), with a total storage capacity of 11,183,000,000 gallons, or 55,000,000 gallons per diem for the two hundred low-river days.

The Lake Eleanor and Cherry Creek watersheds have a capacity of 125,000,000 gallons per diem during the two hundred low-river days, giving a total of 180,000,000 gallons per diem for the same period, which fully equals the supply of the desired Hetch Hetchy reservoir.

The attitude of Secretary Garfield in granting to San Francisco the privilege of using Hetch Hetchy as a reservoir site before ascertaining whether she might not be able to secure an adequate supply of water elsewhere has been commented upon at these hearings. It is interesting to quote in contrast with that action what he said at the White House conference of governors, held last May. On that occasion he spoke as a sane and broad-minded man, and the principle that he enunciated is one in which every public-spirited citizen will most heartily concur:

It has been suggested that in the forest reserves the plans which have been adopted by the Federal Government may not be along the right line. We do not for a moment maintain that the final word has been said, that the ideal law has been passed, or

that the regulations adopted can not be improved. But let me ask this question in answer to the question put by the governor of Montana—I believe something to this effect:

“Why should the Federal Government charge for the general use of the Government those people who are using the forests; why should not that work be paid for by the Government as a whole rather than impose a charge upon those people who have used those special reserves?” I ask as an answer to that question, Why should a great resource owned, as the gentleman admits, by the people at large, be used by private interests, by somebody who is looking only to his own benefit, and not to the benefit of the people of the country? [Applause.] The principle applies not only in the forest reserves, so far as grazing is concerned it applies equally well to the use of the water powers of this country [applause], in the conservation first, and afterwards in the use of those water powers.

Mr. MACFARLAND. Mr. Chairman and gentlemen, I next have the pleasure of introducing Mr. Edmund A. Whitman, of Boston, representing the Appalachian Mountain Club.

STATEMENT OF EDMUND A. WHITMAN, OF BOSTON, MASS.

Mr. WHITMAN. Mr. Chairman and gentlemen, I have visited this region and have spent four weeks in it, so I think I know something about it.

Senator DIXON. In the Hetch Hetchy itself?

Mr. WHITMAN. Yes; and I spent several days in the watershed..

Senator FULTON. Where do you reside?

Mr. WHITMAN. Cambridge, Mass., and I am an attorney in Boston. I think the question before this committee was very well stated this morning in the Washington Post, as follows:

If the city of San Francisco can convince Congress that its welfare depends upon the acquisition of a more adequate water supply, and that the Hetch Hetchy is the only available one, and that the rights involved will be protected, there will seem to be no good reason why Congress should not permit the waters of national parks to be impounded and diverted to domestic and municipal use.

That is the proposition which the city put up to you, that it is necessary for their safety and health, that they should have this particular reservoir. That is what we are here to dispute.

Let me first call the attention of the committee to what I consider is the question before it. There is here a resolution which nominally permits the city of San Francisco to exchange some more or less worthless lands outside, or largely outside, of the national park for lands at the bottom of the Hetch Hetchy, so that they may control the fee of the bottom, and incidentally to that permission the city is given the right to a reservoir. The resolution refers to a grant or permit by the Secretary of the Interior, and I want to call the attention of the committee to the fact that that permit by Secretary Garfield was absolutely without any authority in law, and had so been decided by his predecessor in office.

Senator FULTON. I think a good many of us agree with you on that. I do not say that all do, but I know that some do. I know I do.

Senator FLINT. You also think it is unconstitutional to buy the Appalachian reserve, do you not?

Senator FULTON. I do.

Mr. WHITMAN. When Congress established this national park it imposed upon the Secretary of the Interior the duty of preserving all the natural wonders of that park. Eleven years later, in 1901, it passed another act giving the right to the Secretary of the Interior to grant revocable rights of way to telephone or telegraph companies, or

for water conduits, dams, and reservoirs. Now the two acts should be construed together.

When this question came before Mr. Hitchcock he said, "It is not within my power under the guise of giving a revocable right of way to give away one of the wonders of the park." In that opinion he was supported by Mr. Metcalf, the Secretary of Commerce and Labor, and the permit was refused. Then the city made a further application. They are nothing if not persistent, and through the President the matter was referred to the Attorney-General's office, and you will find a very brief opinion, in which the matter is not discussed at all as the two secretaries had discussed it at length, in which the Attorney-General expresses the conclusion, "In my judgment the Secretary of the Interior has the right under the act of 1901 to grant a revocable right of way." Now nobody questions that.

Senator DAVIS. Do you know who prepared that opinion?

Mr. WHITMAN. I do not know who prepared it. It was signed by Mr. Purdy, Acting Attorney-General. Under that Secretary Garfield, without discussing at all the act of 1890 and the limits upon him of that act, proceeded to grant this right; but in doing so he says "I have not considered at all whether the city need the supply. I take their word for it."

Now we have no objection to the use of this water by the city if they will store it somewhere else; but their proposition is that Hetch Hetchy reservoir, with precipitous walls 1,500 or 2,000 feet high and a narrow mouth 65 feet wide at the bottom, is a very cheap place to build a dam, and the city can get water more cheaply from that place than it can anywhere else, and I think that is so. But it is not so that they can not get that same water stored elsewhere, perhaps at some more cost. It is not so that they can not get plenty of other water in 14 different streams that run down the Sierra Mountains. It appeared before the Committee on the Public Lands of the House that there were other sources which they have not even investigated, and Mr. Englebright, Member of Congress from that district, told them of the middle Yuba River, where there is a flow of a millions gallons and more that they can have, and they did not know anything about it.

Senator FULTON. What is the comparative distance?

Mr. WHITMAN. Substantially the same.

Senator FULTON. Is the character of the country to build through substantially the same?

Mr. WHITMAN. Substantially the same. You run through foothills, and then across the broad plain of the Sacramento River, and then across the hills.

Senator FLINT. Do you think there are any good reservoir sites there?

Mr. WHITMAN. So Mr. Englebright says. I have not examined them myself. I have not been on that river.

Mr. McCUTCHEON. Not only are there reservoir sites there, but reservoirs have existed there since the days of hydraulic mining.

Senator FLINT. Not with the capacity necessary for San Francisco?

Mr. McCUTCHEON. We will develop that—not reservoir sites, but reservoirs.

Mr. WHITMAN. The gentleman knows more about that than I do, and I shall be glad to give him a portion of my time, because I think this is a very important matter.

Now this question has never been investigated from an engineering standpoint by the United States or by anyone representing them.

Senator NEWLANDS. Do you think, if the Government contemplates doing this, that it ought to have some engineering inquiry made by officials of the Corps of Engineers?

Mr. WHITMAN. I do. There is no hurry about this thing. They say themselves it will take them from six to eight years to get water from the Sierra Mountains, with all the haste they can make, and it must not be forgotten that they have a water supply, that there is a company furnishing them water now.

Senator SMOOT. If they waited ten years, it would take them that much longer, would it not?

Mr. WHITMAN. That is true, but there is no immediate rush, that they must have the water to-day or to-morrow or go dry?

Senator FLINT. Don't you know that although this company exists, yet while the city is making other plans to enter the field and supply the municipality with water, the corporation that is there supplying the city will be unable to obtain the money to carry on the work necessary to keep the city supplied with an adequate amount of water?

Mr. WHITMAN. No; I do not think I do, because the city frankly says: "We want this company's supply, and we propose in some way to get it, and we have got to rely upon that until we get it from the mountains."

Senator FLINT. And you think people will furnish money to invest in a plant when the city proposes to take it away from them?

Mr. WHITMAN. If the city will treat them decently, there is no doubt about it.

Senator FLINT. Do you think the city is not treating them decently?

Mr. WHITMAN. When the company has had annually to go to the United States courts, and has had the rates fixed by the city enjoined because they were confiscatory, and every dollar collected by the company has been under an injunction, I say the city has not treated them fairly.

Senator DIXON. If it appears from the evidence that the men who bought the stock of the Spring Valley Water Company at \$22 a share have refused \$50 a share from the city, do you still think that the water company has not been fairly treated by the city of San Francisco?

Mr. WHITMAN. So far as the price is concerned, that does not affect the matter. They have had to collect every dollar they collected under injunction, because the rates imposed by the city were confiscatory. Exactly what people propose to sell out for is not important.

Senator DIXON. How did you become acquainted with the financial affairs of the water company?

Mr. WHITMAN. Largely from reading what was said before the House committee and from documents.

Senator SMOOT. Are you representing any stockholders of the Spring Valley Water Company living in Massachusetts?

Mr. WHITMAN. Not a single one. If there are any there, I do not know of them. I have no pecuniary interest in this matter whatever. I do say, however, if Congress is going to act, it should get its own information and not take Secretary Garfield's opinion, based on information furnished by the city of San Francisco. Now, I should like

to read a resolution which it seems to me would cover the ground and would end this whole controversy. It is as follows:

That the President be, and hereby is, authorized and empowered to appoint a special commission of three persons, one at least of whom shall be a competent engineer familiar with the problems of water supply, and none of whom shall be citizens of California, to investigate and report upon the advisability and propriety of granting to the city of San Francisco rights within the Yosemite National Park to use the Hetch Hetchy Valley or Lake Eleanor, or both, as reservoirs for a municipal water supply, and whether the necessities of the city properly require and justify such a grant. Such commission shall proceed with all dispatch to make such investigation and may employ experts, give hearings, and take testimony to such extent and in such places as it may decide, and shall report to Congress on or before the 1st day of November next.

Then Congress would have some information of its own to act upon, and not the ex parte statements of the city, made apparently by their own representatives, who say, "We have not investigated these other sources particularly carefully, because we are convinced this is the cheapest place." There are thirteen other sources which they have dismissed because they are not so cheap. That is what they say.

Senator DIXON. That sounds to me like mere business horse sense.

Senator DAVIS. That proposition is sensible, to have Congress get its own information.

Mr. WHITMAN. There is no information available to Congress at the present time. There are no reports of any engineers, other than those appointed by the city.

Mr. JOHNSON. A man would not buy a bulldog on the information that this Congress has officially at present.

Senator FULTON. That is, if he would buy a bulldog at all.

Mr. WHITMAN. I have added to this resolution a provision which my associates think I had better not add, that the city of San Francisco pay for this investigation. If they have got to pay for it, it will never be made.

Senator DAVIS. I think that is a good proposition.

Mr. WHITMAN. Then I will read it:

Provided, however, That the necessary and proper expenses of such commission, including compensation to the members thereof, shall be paid by the city of San Francisco, the amount of such compensation to be fixed by the President when the appointments are made: And provided further, That such investigation shall not be begun until said city has assured said commission, by bond or otherwise, as it may elect, that such expenses shall be paid.

Senator FLINT. Do you not think there ought to be another proviso in there prohibiting the city from going into the water business at all, which would be the result of thus placing the burden on the city for the making an investigation by the Government?

Senator DAVIS. Would you be willing for the Government to make the investigation then?

Senator FULTON. I think if the Congress is going out to seek information, which information is presumably and I think actually in the interest of the people of the entire nation, because it is a matter of national concern, Congress ought to pay the expense.

Senator NEWLANDS. The cost of that ought not to be imposed upon the city.

Mr. PHELAN. San Francisco has already paid a hundred thousand dollars in this investigation. It employed Mr. Grunsky and Colonel Mendel for this very purpose, and their report was unanimous in

favor of this above all other sources of supply. The city has already made its outlay and submits its data.

Senator CLARK, of Wyoming. I understand that is based in part at least upon the comparative cost of getting the water supply. Is that true?

Mr. PHELAN. They found that the other water supplies were all in private ownership. Of course the city could condemn and acquire those water supplies, but they are in private ownership and serving other useful purposes, mining and agricultural, and for the creation of power.

Senator CLARK, of Wyoming. Did these gentlemen make an investigation as to the comparative cost of the water supplies?

Mr. McCUTCHEON. No, sir; they did not.

Mr. PHELAN. They found the distance of the various supplies and the amount of money it would cost to bring in water from those sources of supply.

Senator CLARK, of Wyoming. Undoubtedly in their general results they found that the city would be best served as to cost, as to time, and as to supply by the Hetch Hetchy.

Mr. PHELAN. Yes; it was laid out as a reservoir by the Geological Survey of the United States; and the difficulty in the mountains is in getting a reservoir site. There is an abundance of water.

Senator FULTON. I should say it was laid out as a reservoir site by God Almighty.

Senator McLAURIN. Senator Dixon said something about the stock of the water company having been purchased by the present stockholders of the company, as I understood, for something like \$22 a share.

Mr. WHITMAN. Senator Dixon asked that question.

Senator DIXON. That statement was made at the other hearing.

Senator McLAURIN. And that they refused how much?

Senator DIXON. Fifty dollars a share.

Senator McLAURIN. When was that purchase made?

Senator DIXON. Just after the earthquake.

Senator McLAURIN. Now, those people refuse \$50?

Senator DIXON. I think Mr. Phelan can tell you along those lines. I do not remember.

Senator FULTON. I do not think he states that as a fact. He simply says that has been stated.

Senator McLAURIN. Now, did this increase in the price of the stock occur at the time during which this litigation was going on, restraining or enjoining the city from imposing the rate that had been fixed?

Mr. WHITMAN. Mr. McCutcheon can answer that much better than I can.

Senator McLAURIN. I should like to know that.

Mr. McCUTCHEON. In 1900, I think in the month of May, the city of San Francisco through its board of supervisors, which is its legislative body, called upon the Spring Valley Water Works, the predecessor in interest of the Spring Valley Water Company, to name a price upon its property.

Senator McLAURIN. The question I wanted to know about was this: Is it true that the stock was bought by the present owners of the water company at \$22, and has that stock gone up to \$50?

Mr. McCUTCHEON. No, sir; neither statement is correct. The fact is that after a period of low water rates, and following the earthquake, the stock of the company did fall to about \$20 a share. It is now selling, I think, for \$31 or \$32. The stock has not sold for \$50 at any time since the earthquake nor at any time since 1897, at which time a policy of rate cutting was begun by the legislative body of the municipality.

Senator SMOOT. That stock fell on the market to \$22. It never was issued to the stockholders at \$22; that was the market value.

Mr. McCUTCHEON. That was the market value. I was about to say that prior to 1897 the stock of the company was ruling at par; in fact, it sold very much above par. Senator Newlands, who was at one time the counsel for the company, is quite as familiar with that as anybody.

Senator SMOOT. Par is a hundred dollars?

Mr. McCUTCHEON. Par is a hundred dollars.

Senator NEWLANDS. The stock has been doubled since, and the par would be \$50.

Mr. McCUTCHEON. If you will allow me, par is still \$100, but the capital stock of the existing corporation is double the stock of the old corporation.

Senator DIXON. Was it watered?

Mr. McCUTCHEON. No; it was not watered in the ordinary sense.

Senator FULTON. They did not have the water. [Laughter.]

Mr. McCUTCHEON. We have a law in California which makes it impossible for a company to issue bonds in excess of its capital stock. The Spring Valley Water Works, whose stock was \$14,000,000, had issued indebtedness almost equal to its capital stock. It was necessary that the system should be expanded, and in order to expand the system it was necessary that more bonds should be issued. The term of existence of the Spring Valley Water Works was about to expire. A new corporation called the Spring Valley Water Company was formed. As I said, the capitalization of the old company was \$14,000,000. The capital stock of the new company was made \$28,000,000, and each stockholder of the old company received two shares of stock of the new company. For all practical purposes we have called the stock of the new company as of the par value of \$50. Its nominal par value is \$100. In other words, the capital stock of the company now, as defined by its articles of incorporation, is \$28,000,000. There has been no watering of stock in the ordinary acceptance of that term.

Now, I was about to say that in 1897 there began a system of rate cutting by the legislative body of the municipality. And let me suggest to you (I am inclined to think it has not been developed here before) that we have in California, as part of our constitution, a provision conferring upon legislative bodies of municipalities not only the power but the duty of annually fixing the rates which public-service corporations purveying water may charge. As I say, not only is that power conferred upon the legislative body of the municipality, but it is made the bounden duty of such legislative bodies to annually fix rates, under penalty for failure to perform that duty of removal from office. That constitutional provision says that any corporation collecting rates otherwise than as so established, that is, otherwise than

established by the public agency, shall forfeit its franchises and works to the city or to the municipality which it is serving, for the public use.

From 1880 the public agency, in accordance with that provision of the constitution, established the rates which the Spring Valley Water Works might charge. Those rates were accepted by the company, collected by it without objection or opposition until 1902, with one exception. That was the year 1882. The company did file a bill to set aside the rate schedule for that year, upon the ground that it was confiscatory. As I recall, Senator Newlands was counsel for the company in that case.

There was no further objection to the rate schedule enacted by the public agency until the year 1902.

In 1897 Mr. Phelan became mayor of San Francisco, and shortly after the beginning of his incumbency a policy of reducing rates for water was begun. The rate, for instance, by way of example or illustration, for a five-story house prior to Mr. Phelan's incumbency was \$1.45. The first year after his incumbency it was reduced to \$1.20, and reductions continued from that time on, first to \$1.08 and then--

to \$1.

Senator SMOOT. That is per month?

Mr. McCUTCHEON. That is per month. The rate for hydrants when Mr. Phelan became mayor was \$5 per month per hydrant. In the year 1901, his incumbency having ended the 1st of January, 1902—I may say that the previous year the company was allowed for hydrants a monthly rental of \$5—there happened to be a shortage in some department of the city government, a shortage of something like \$146,000, and by way of generosity to the city it was suggested that that expense should be made up by taking it from the city allowance ordinarily made to the water company for hydrant water; and although during the previous years the company had been allowed \$220,000 for water for hydrant supply to the city it was reduced that year to \$80,000 without any increase being made in the rates to private consumers. And I may say to you that at no subsequent time was any allowance made to the company to make up that difference of \$140,000.

I have given you one illustration of a reduction of rates. I think this is germane, because I propose, when I get to it in order—

The CHAIRMAN. Hold on. We are giving these gentlemen a hearing, and if you are going into this so extensively, you will absolutely cut them off. We will hear you subsequently on this.

Mr. McCUTCHEON. Very well. I only did that in answer to Senator McLaurin.

Senator McLAURIN. This was not all necessary in answer to the question I propounded.

Senator DAVIS. Senator McLaurin's question might have been answered yes or no.

The CHAIRMAN. This is taking up time.

Mr. WHITMAN. Mr. Phelan has quoted Mr. Grunsky, former chief engineer. Mr. Grunsky in his report to the city said that in the case of San Francisco—I now quote him—

There is no single source of supply so preeminently available that it would without question rule out others from comparison.

We will stand on that, and ask the Congress of the United States to investigate the question as to what these others are that will stand

comparison with it. If that commission reports that the Tuolumne River should be taken, and that Hetch Hetchy should be taken, we have nothing to say.

ADDITIONAL STATEMENT OF J. HORACE MacFARLAND, ESQ.

Mr. MACFARLAND. Mr. Chairman and gentlemen, I wish very briefly to attack the sincerity of the resolution which you are now considering (S. Res. No. 123), in that it does not clearly imply what it really means, that the watershed which is tributary to the Hetch Hetchy Valley must eventually be given up if San Francisco is to have a modern and safe water supply. That question seems to have been overlooked by the honorable Secretary of the Interior, and it has certainly been overlooked by some of the proponents of this scheme, one of whom spoke of expecting to see a lake there, with boating and fishing, when this thing had been done.

The CHAIRMAN. Will you explain to the committee what I have not had any information about, where the city of San Francisco can readily get an increased water supply without going here?

Mr. MACFARLAND. That I can not answer.

Senator SMOOT. It is in this report.

Mr. MACFARLAND. If she takes the Hetch Hetchy Valley, she must take the watershed of the Hetch Hetchy Valley or poison her citizens. Indeed, the covert intention of the resolution is that the watershed must be protected, and in no other way can it be a proper watershed. Cities have neglected that feature. The city of Pittsburg neglected it, and has paid the penalty in an epidemic of typhoid fever. The city of Philadelphia neglected it, and has now installed a very expensive filtration plant. The city of Ithaca neglected it, and one Italian on the watershed of the water supply was sick with walking typhoid, and more than one hundred died in less than two months as a result. The city of Reading, Pa., has had a most serious epidemic of typhoid fever from similar causes. There is no modern means of protecting the lives of the citizens of a city better than the control of the watershed of its water supply. If San Francisco gets the Hetch Hetchy Valley, she must have every drop of water which runs into the Hetch Hetchy Valley under her police control, or her watershed will be poisoned and will not be what she assumes she is getting. The map is before Senator Smoot, and you will be able to note the dividing lines which show the large area of the valley which must be given to San Francisco as her own, if this thing is to be done.

In view of all this talk about roads, have you ever heard of anyone building a pleasure road around a city water reservoir? Did you ever hear of anyone going boating on a city reservoir? One single careless case of typhoid fever in the region where the water runs into that reservoir, such is the tremendous virulence of the typhoid germ, may poison thousands of the citizens of San Francisco.

Senator SMOOT. In substance, your contention is that in granting this Congress will not only grant the Hetch Hetchy Valley but will take also the valley of the Tuolumne as well?

Mr. MACFARLAND. The whole valley which is tributary to the Hetch Hetchy, every single foot of it, must be given to San Francisco.

Now, I want to refer to the suggestion made by Senator Newlands that this matter should be looked into by Congress. As to the method,

surely Congress is quite competent to get information in any way it chooses; and if Congress will inform itself as to the details of the matter by impartial inquiry, I am sure it will be a very long time before the Hetch Hetchy Valley or the Yosemite National Park will be alienated for a private water supply.

I am arguing to you about the value of scenery. It has an immense value financially. The falls of Niagara are an instance of that. Europe takes in \$550,000,000 a year from those who travel to behold its scenery. In this country we have not as yet seen fit to safeguard our great national possessions. If we give away the Hetch Hetchy Valley, we simply give away an incalculably valuable means of collecting money from the dwellers across the sea, as well as give away a means of poisoning the city of San Francisco.

Now, I want to introduce to you a lady who has had the privilege of camping in Hetch Hetchy, who can speak to you from that intimate knowledge possessed by one who has been there, and who has seen it through the eyes of a poet. Miss Harriet Monroe represents the Chicago Geographical Society, and I am pleased to introduce her at this time.

STATEMENT OF MISS HARRIET MONROE, OF CHICAGO, ILL.

MISS MONROE. Gentlemen, I have been sent here as the representative of the Chicago Geographical Society, which has a membership of 500 citizens, and of the Saturday Walking Club, whose membership of over 5,000 includes the Playground Association of Chicago. But in a larger sense I represent the people of the United States, to whom the Hetch Hetchy Valley has been deeded in perpetuity by Congress, whose children and children's children will have an ever-increasing interest in it.

It is proposed by damming the outlet of Tuolumne River to flood this valley and make a lake of it; and the proposal includes, or will inevitably include, all measures necessary to protect the health of the people whose water supply comes from this reservoir. Now, I ask you to turn from this project for a moment and consider how you would receive a similar proposition with regard to the Yosemite Valley. I think there is not a man of you who would not be outraged, would not repel the suggestion as an insult to his intelligence. Why? Because, even if you have never seen it, you have heard all your lives of its wonders. Your imaginations have pictured the mountains which lock it in, with El Capitan standing sentinel in his gleaming coat of mail; its infinite variety of cataracts dashing over those lofty walls to the thundering, foaming, cascading, great river below. You know of the meadows which clothe its level floor, green grasses thick-set with little flowers, of its Happy Isles whose millions upon millions of lazaleas are watered by the foam of the Niagara-like torrent around them. And you have been thrilled by the thought of the rich forests, of all imaginable trees, even to the mightiest of all, which are protected forever by those lofty cliffs. Now suppose some one, under whatever pretext, should approach this committee with a proposition to flood the Yosemite Valley, to make a lake of it. Suppose that person should say that the waters of the Merced River are going to waste when they might quench the thirst of cities, and that the Valley Wonderful would make a very pretty lake. Who can doubt what you would do

with such a proposition? You would reject it in less time than it takes me to mention it; reject it with scorn. Why? Because all the beauties and wonders of this valley are in our hands straight from the hands of God; and by you, by the Government of the United States, they have been dedicated to the people forever.

Now, I tell you that this proposition to convert the Hetch Hetchy Valley into a reservoir is scarcely less destructive, less unrighteous than the other. It may be no one of you has ever seen the Hetch Hetchy—possibly never heard of it until this question arose. You ask me why, if its beauty rivals the Yosemite, the world has heard so little about it, while the Yosemite is famous everywhere. I answer that there are plenty of reasons to-day, reasons which will vanish to-morrow when it shall have become a place of pilgrimage, and all the world shall thank you for saving it. The Hetch Hetchy is of more recent discovery than the Yosemite; it is more remote and inaccessible. As yet there are no accommodations there for travelers, not so much as a cabin, and no way of getting there except over rough trails, with pack animals to carry bedding and provisions. Thus only a few hundred persons in all the world have seen it, and though some of these have written about it and made photographs of it it has not yet become dear to the eyes and ears and hearts of men.

In this fact lies your opportunity. It is for you to keep this treasure intact for the future, to pass it on, like a crown jewel, to the generations who shall know and love it. It is my good fortune to be one of those few happy hundreds who have camped in this valley. Through days of sunshine and nights of moonlight I wandered through its flowery meadows, along the swift Tuolumne, and slept under its mighty trees, with the growing moon tipping the great granite shoulder of the Kolana Peak above me, that bold knight in silver armor who guards this valley as El Capitan does the Yosemite. Now, if you will follow me for two or three brief minutes, I shall try to show you the Hetch Hetchy as I saw it during that beautiful week of July, 1904, that you may realize, in some faint measure, what an appalling sacrifice is demanded of the people of the United States—nay, of the world—by the board of supervisors of the city of San Francisco.

It was one hot noon, after a long morning's tramp, that I followed the leaders of our party up the gentle slope of an enormous granite rock, quite ignorant of what lay beyond. Suddenly below me—hundreds of feet below—lay the valley, a broad meadow, green as emerald, skirted at the edge with forests and locked in precipitous granite cliffs, mountain high, between which white waterfalls stood erect and slim like dryads. Through this meadow a shining river wandered lazily—we could not see from so far how swift it was—turning back upon its course, tangling itself into S's and M's, as if it were loath to leave so beautiful a place. It looked like pictures I have seen of the Vale of Cashmere, like that river whose meanderings have been the inspiration of a nation's art, whose pattern you may unravel in your Persian rugs and shawls. This was our Vale of Cashmere; ours forever, wisely dedicated to the people by our Government, preserved forever from despoiling hands within the sacred boundaries of a national park, and therefore indestructible, inviolable.

Well, we descended into the valley, and marched for miles, single file, through a faint trail between flowery grasses shoulder high;

marched to our camp under the straight granite column of Kolana—a camp shadowed by great pines and firs and cedars, beside the beautiful Tuolumne. The stream proved to be no gentle brook, but a grand river, deep and wide, which met the valley in a cloud of foam from its cascades and cataracts in the Grand Canyon of the Tuolumne; and whose sparkling green waters, so clear that we could watch the fishes play in the pools, gaily danced over their wandering course to the narrow outlet between the mountains.

It was a garden of paradise, this valley; a lesser Yosemite, but very different, with an infinitely charming individuality of its own; smaller but more compact, less grand but not less beautiful. All the trails led to it, and some day the Government would build a wagon road and a permanent camp as in the Yellowstone, and would cut a trail through the canyon, whose fierce grandeur only the hardest knapsackers could not behold.

Gentlemen, it rests with you to preserve intact this jewel casket of the mountains. If you permit it to be flooded, the flowery grasses, the great trees, and the winding pattern of the river will be destroyed forever, even though your successors revoke your deed of gift. No one, by taking thought, can restore the work of ages.

Those who wish to lay hands on this treasure tell us what a beautiful lake it would make. We answer that there are hundreds of mountain lakes in the Yosemite National Park, but only one Hetch Hetchy Valley. They hint at wagon roads around the edge of the lake, but the valley floor is too level for that. The lake would be locked away from the people by a dam and mountain walls. Moreover, California has laws regulating the purity of water-supply sources. Under these laws it is probable that you and I and future generations would be excluded not only from the valley, but from the entire Tuolumne watershed, by far the finer half of the Yosemite National Park. I ask you to study this grant of the Interior Department, and decide whether it protects the people from such exclusion in the only way possible—that is, by insisting upon filtration of the water.

Also, does this grant charge any rental whatever for water-power rights, valued by the grantees at \$10,000,000? Or does it properly protect those rights against the subtle machinations of municipal grafters, against the specious pretexts under which they might divert it to their own purposes? Why should this enormously valuable privilege be given away? If the Hetch Hetchy is to be destroyed, why should not the people be paid a fair rental for the improvement and maintenance of their park? What right has a single city to absorb the property of the nation?

United States Army engineers and others have reported that San Francisco is exceptionally well placed for water supply; that the present source may be developed to three times the present consumption; and that no less than 14 other sources are easily available. Why, then, should she be permitted, like some ruthless Cleopatra, to dissolve this pearl without price in the cup she lifts to her lips?

I now reach my last point. The bill which Congress has been asked to pass provides that this Government shall exchange Hetch Hetchy Valley "for an equal amount of land outside the park." This "equal amount of land" is now known, I am informed, as "Hog Ranch." Gentlemen, I have camped in Hetch Hetchy Valley, and I have also camped in Hog Ranch. If the exchange were just, I should

see no reason to complain. But I protest that this proposition adds insult to injury. It is as equitable as if New York City solemnly proposed to exchange, acre for acre, the ground its city hall stands on for farming land on Long Island, or as if Marshall Field & Co. should trade the corner of Washington and State streets for a similar corner in Podunk. Hog Ranch is a pretty ranch, like thousands of others, but it has no scenic value whatever. I would not, and neither would you if you had ever been there, give a square foot of Hetch Hetchy Valley for the whole of it. Moreover, it is not, as Hetch Hetchy is, the focal point of all the trails in that half of the Yosemite National Park; it is not the very nut and kernel of one of the most beautiful mountain regions on the whole round globe.

Gentlemen, in the name of the societies I represent; in the name of the people of the United States, who are more concerned in this matter than they realize; in the name of future generations who will hold you to account, I beg you to reject this proposition, or at least to move no further in the matter until you have been over the ground, or have sent a commission from your number to examine it. [Applause.]

Senator SMOOT. I move that the further hearing of this matter be adjourned until Friday, February 12, 1909, at 10 o'clock a. m.

(The motion was agreed to.)

Accordingly, at 12 o'clock noon, the committee adjourned until Friday, February 12, 1909, at 10 o'clock a. m.)

COMMITTEE ON PUBLIC LANDS,
UNITED STATES SENATE,
Friday, February 12, 1909.

The committee met at 10 o'clock a. m.

Present, Senators Nelson (chairman), Gamble, Fulton, Smoot, Heyburn, Dixon, McEnery, and Newlands.

Mr. JAMES D. PHELAN. Mr. Chairman, on behalf of the city of San Francisco we are willing to submit our case on the printed record before the House committee, which is accessible to this committee. At those hearings both sides were represented and made very full statements.

Mr. EDWARD J. McCUTCHEON. In response to that I desire to say that some statements were made here the other day by Senators, showing that they had derived, from statements made at the first hearing before this committee, of which no stenographic report was preserved, impressions which I feel able to show are entirely erroneous. Under those circumstances it would be very unfair to the interest which I represent to submit the matter upon the House hearings. If these gentlemen had suggested that in the beginning, and had not appeared before this committee and made statements which I think I can completely answer, I would be quite willing to submit it upon the House hearings.

Mr. PHELAN. I submit that no statements were made before this committee that were not made before the House committee and taken down and incorporated in the record.

Senator FLINT. I want to state very frankly that according to my theory of this application, of course any citizen can appear; but as

I read the record, the position of the Spring Valley Water Company, represented by Mr. McCutcheon, is entirely irrelevant to this whole proceeding, other than the fact that the committee can hear any citizen who wants to appear.

It seems to me that the grievance of a private corporation ought not to be allowed to determine what shall be done as far as granting to a municipality water rights or a right of way over public lands by the Congress of the United States.

Senator SMOOT. You do not think they ought to be barred from making any statement that any other citizen might make?

Senator FLINT. Not at all. I have already said that; but their troubles are entirely irrelevant to any matter that is before the Congress.

Senator SMOOT. Of course we are not here to protect them, in any way, shape, or form, any further than we would protect any other citizen.

The CHAIRMAN. At the beginning of this matter here we gave nearly all the time, if I remember rightly, to the ex-mayor and other representatives of the city of San Francisco. At the next meeting those ladies and gentlemen who were opposed to this measure because they wished to have the beauties and resources of the park preserved were given a hearing. Now, there seem to be a third party interested in this matter, and perhaps it would be fair to give them a hearing. I would suggest to the committee, if they have no objection, that we give a part of the time to the representatives of the water company; but they will have to cut it short, because we want to give everybody a chance to be heard.

Senator NEWLANDS. Are there any people expecting to be heard besides the representatives of the Spring Valley Water Company?

The CHAIRMAN. I do not know. Do you want a further hearing on your side, Mr. Phelan?

Mr. PHELAN. Except what may arise in the course of Mr. McCutcheon's remarks. We may want to set him straight on that. It will be in the nature of a reply.

The CHAIRMAN. You have had the opening, and these people who are in favor of preserving the park have had a hearing; and now if we give the representatives of the company a hearing, then if we give you two interests that have had a hearing an opportunity for a rejoinder, I think that will be fair.

Senator FLINT. That is all right.

The CHAIRMAN. A quorum is present. We will go on with the hearing. We will give you, Mr. McCutcheon, and those whom you represent, half an hour, and we will divide the other time half an hour apiece; so try and make your argument as brief as possible.

Mr. McCUTCHEON. Do I understand that an hour and a half will be given to the consideration of the matter?

The CHAIRMAN. Yes; unless the committee agree to sit further.

**STATEMENT OF EDWARD J. McCUTCHEON, ON BEHALF OF THE
SPRING VALLEY WATER COMPANY.**

Mr. McCUTCHEON. While I do not want to trespass upon the time of the committee any further than is necessary, it will be practically impossible to outline my case in half an hour; and inasmuch as on the first day on which this matter was considered all of the time was given to the representatives of the city of San Francisco, it seems to me that that is hardly a fair division of the time.

The CHAIRMAN. Go on, and we will hear you, and then the committee will determine as we go along.

Mr. McCUTCHEON. It was suggested by Senator Flint a few moments ago that the interest of the Spring Valley Water Company was purely and essentially a private interest, and that it was at least doubtful whether that company was entitled to a hearing before this committee at all.

In one sense the interest of the Spring Valley company is that of a private owner of property. In another sense it is most vitally and essentially interested in the action which this committee may take. I think there is no doubt that it is clearly entitled to a hearing, and in order that the committee may have an appreciation of the relation of the company to this matter, I think it will not be inappropriate to state generally the relations which have existed between the company and the city during the past years.

The Spring Valley Water Works was formed under a general act of the legislature of California, passed in 1858. It was the policy of the legislature of California in those days to encourage the investment of capital by private parties in public service corporations, in order that the growing communities of California might be supplied with public utilities, and in order that the State and the municipalities of the State might be relieved from the burden of making the investment necessary to supply those utilities themselves.

As I have said, this corporation was formed under a general law passed in 1858. At the same time there was passed an act granting to a man named Ensign and his associates the right to use the streets of San Francisco for the purpose of laying pipes and supplying the city with water.

As you all know in a general way the rates of interest in California in those days were exceedingly high; and so anxious was the legislature that private capital should be induced to enter upon enterprises of this kind, that it was provided by that act that the people who invested their money in a water plant to supply the city of San Francisco should be entitled to a profit, of not to exceed 20 per cent per annum.

Under that act the Spring Valley Water Works was started. It began in a small way, but in order to anticipate the demands of the community, which was a growing community, it acquired properties from time to time; and, I may say, that it has always kept pace with the demand. It acquired properties from time to time until finally it became the owner of all of the water-producing properties within a radius of 50 miles of San Francisco, except such as were used for supplying small towns and villages about the bay.

To give you some illustration of what the development has been, in 1865 the consumption of water for the entire year in San Francisco was 864,000,000 gallons. It increased gradually, until 1905 the consumption was 12,476,000,000 gallons.

You may not know it, but it may not be out of place to state that the Spring Valley Water Company is the only company which supplies water to San Francisco, that the property which the Spring Valley Water Company owns is the only property that is utilized for the purpose of supplying water to San Francisco, and that from 1858 down to the present time that company and its grantor have supplied the entire demand in San Francisco so far as it has been supplied, and I will develop to you later on the extent to which it has not been supplied.

As I said, the consumption in 1905 had increased to 12,476,000,000 gallons. During the following two years the consumption was a little less than that, owing to the loss in population caused——

Senator NEWLANDS. What year was that?

Mr. McCUTCHEON. 1905. The consumption had then increased to 12,476,000,000 gallons.

Senator NEWLANDS. Increased about fifteen times from 1864?

Mr. McCUTCHEON. A little more than fifteen times. For the following two years the consumption was a little less than 12,476,000,000 gallons, due to the decrease in population caused by the earthquake and fire. A great many people who in 1905 were living in San Francisco removed to near-by places immediately after the fire, and thus reduced the population; but the consumption is to-day practically what it was in 1905.

Senator DIXON. What is the population of San Francisco?

Mr. McCUTCHEON. I suppose the records of the water company are about as good an index as can be had to the present population. Those records indicate that the population to-day is about 425,000. Of course you understand that no census has been taken since the census of 1900; but it is the impression of the officers of the water company that the population is about 425,000.

Mr. PHELAN. The California promotion committee estimate at it 509,000.

Mr. McCUTCHEON. I suppose it would not be appropriate for me as a Californian to suggest that there was any possible elasticity in the estimate of the California promotion committee; but I state to you the fact when I say that it is the impression of the officers of the water company that the population is at least 425,000.

Senator FLINT. Of course it is not to be imagined that the representatives of a promotion company would overstate anything.

Mr. McCUTCHEON. I do not wish to be understood as charging them with exaggerating anything, but I am giving you the belief of the officers of the water company on the subject.

Senator FULTON. Of course promotion companies are always conservative. [Laughter.]

Mr. McCUTCHEON. The water company acquired properties in advance of the demand, and of course, as you can well understand, it was necessary that investments should be made upon which no immediate return could be had. For a period of six or eight years (and I speak from the record) the company received no dividends whatever.

I said to you that the act under which the company was formed permitted it to recover a profit of not to exceed 20 per cent per annum. No such profit was ever realized. The highest profit that the company ever obtained was 9 per cent per annum, and it was only able to pay that percentage for a period of three years.

Senator SMOOT. That does not represent the percentage made. That is the amount that they paid out in dividends.

Mr. McCUTCHEON. That is the amount they paid out in dividends. Of course if they made it they were entitled to recover it in profit, and if they put it back into their plant it was to all intents and purposes as if they had taken money out of their own pockets and put it in. In other words, it is in all respects comparable to capital invested.

Senator SMOOT. You said that was the largest dividend they paid. Is that the largest amount of profit they made in any one single year?

Mr. McCUTCHEON. No; they made a larger profit than that, but that profit went back into the plant. It was necessary that they should expand the system, and in order to get the money to do that it was necessary either that they should reinvest that profit or provide the money otherwise. They not only reinvested the profit, but they had to provide money otherwise in addition to that.

Some time after the organization of the company the legislature of California passed another act with reference to rates. That act provided that rates should be established by a commission, two of whom should be appointed by the city, two by the company, and a fifth by the four. That continued to be the law until the 1st of January, 1880.

We ratified a constitution in California in 1879, and that constitution contained a provision that the legislative body of each municipality which was being supplied with water by a public-service corporation should, in the month of February of each year, establish rates to be collected by the corporation during the following fiscal year, beginning the 1st of July. The grantor of this company questioned the constitutionality of that provision of the constitution as applied to it, and the Supreme Court of the United States finally determined that, exercising the power to alter, amend, and repeal, it was competent for California to change the method by which it had previously been provided that the rates of the company should be fixed.

Beginning with 1880 the public agency of San Francisco fixed the rates which the Spring Valley Water Company might collect. There was no controversy between the company and the city with reference to the sufficiency of those rates between 1880 and 1900, I think, with the exception of one year. That was the year 1882. The company being dissatisfied with the rates adopted by the public agency for that year, filed a bill in equity in the state court and obtained a decree that those rates were confiscatory, and they were set aside.

As I said, it is provided by the constitution that the rates shall be fixed by the board of supervisors of the municipality. It does not use the language "board of supervisors," but it says by the legislative body, which in this case is the board of supervisors of the city and county of San Francisco. It further says that if the board of supervisors fail to enact a rate as required by the constitutional provision, they shall be subject to peremptory process at the suit of any person, to compel them to fix the rate: and the legislature, shortly after the ratification of the constitution, passed an act by which it

was provided that if the legislative body of the municipality failed to fix the rate they should be subject to removal from office. I call attention to that now, because to my mind it has a very important bearing upon a situation which I wish later to develop, to show you that it is not within the discretion of the legislative body of the municipality to enact these rates, but that it must, under a penalty of removal from office, fix the rates. Of course that obligation will continue after the city shall have acquired this Hetch Hetchy system, if it shall acquire it, after the city shall have become the competitor of the Spring Valley Water Company. That is to say, after the city shall become the competitor of the Spring Valley Water Company it will still be the duty of the city to fix the rates of the Spring Valley Water Company; and there is a further provision of the constitution that any company collecting rates other than as so established shall forfeit its works and franchise to the city for the public use.

Now, of course, it goes without saying that there will be no obligation upon the city to fix for itself, for its own plant, the same rate which it fixes for the water to be supplied by the public-service corporation. I do not think any of you gentlemen have ever heard before of a situation in which one man or corporation was permitted to fix the price at which his competitor should sell his commodity without any obligation being imposed upon the man who fixed the price to sell his commodity at the same figure. Now, that is the situation that will exist when and if the city of San Francisco obtains this Hetch Hetchy supply.

Senator HEYBURN. Is it contemplated that these two organizations shall operate at the same time? Is it not expected as a fact that if the city undertakes to furnish water the other company will either be purchased or go out of business?

Mr. McCUTCHEON. I am glad you suggested that question at this time, Senator. Of course, it goes without saying that if San Francisco can become a competitor of this private company, if it can fix a rate to which this company must conform, a rate to which if it does not conform all of its franchises and works shall be forfeited to the city and county of San Francisco for the public use, and if there is no obligation upon the municipality to fix the same rate for its own water, the Spring Valley Water Company must go out of business. Now, let me answer the first portion of your question.

Senator FLINT. Have you not the same remedy, when the city is engaged in distributing the water supply for the city, to go to the courts for relief, as you did before they entered into the business of distributing water?

Mr. McCUTCHEON. Let me answer that question by asking you this: I have said that it is a constitutional provision that any company collecting rates otherwise than as so established shall forfeit its works and franchises to the city. That means not one jot higher than those rates, and not one jot lower than those rates, but just exactly those rates. That is what the constitutional provision means.

Senator FLINT. You have done business under that provision all these years, and the property has not been forfeited.

Mr. McCUTCHEON. But we have not had the city as a competitor.

Senator FLINT. What difference does that make?

Mr. McCUTCHEON. Now, if I may answer that——

Mr. PHELAN. The Schmitz board forfeited the property, and the present government restored it to the owners.

Mr. McCUTCHEON. Yes; but while that is not germane to this particular feature of this discussion, if the Schmitz board forfeited our property to the city and did it rightfully, it had no right to give it back to us.

Mr. PHELAN. We did not take that advantage of you.

Mr. McCUTCHEON. Well, but you were not in a position to extend any such generosity. You did forfeit it, you did depress our securities, and after you had forfeited our plant and depressed our securities you went before the circuit court of the United States and said, "Your property is not worth more than so much, because the market value of your securities is only so much."

Senator FLINT. If it will not interrupt you——

Mr. McCUTCHEON. Not at all, Senator.

Senator FLINT. Is it not a matter of fact that as between the city of San Francisco and the Spring Valley Water Company, which you represent at this time, there is simply a difference of about \$4,000,000?

Mr. McCUTCHEON. No, sir. I will come to that, Senator, later on. I want to answer the questions which you put to me a while ago. And in order to disabuse your minds (and I measure my words when I say it) there is absolutely no foundation for the suggestion heretofore made that the city of San Francisco has ever made any offer in any amount for any of the properties of the Spring Valley Water Company.

Senator FLINT. Let me ask you right there, if it will not interrupt you——

Mr. McCUTCHEON. No; go ahead.

Senator FLINT. I am very anxious that, as far as that controversy is concerned, it may be closed, if it can be, and as far as I am concerned I would be very glad if we could come to a place where we could agree, as far as these gentlemen representing the city are concerned, and you representing the Spring Valley Water Company are concerned, as to what would be a fair price for your property, to be taken over in the event that this grant was made.

Mr. McCUTCHEON. Senator, let me suggest in answer to that (and I will develop this from the record), I want to say now that when I make any statement of fact here, if there is any question in the mind of any member of this committee or in the mind of anybody representing San Francisco here, I would like to have the statement challenged, because I shall make no statement of fact that I can not substantiate from the record.

Senator FLINT. I will not interrupt you again, but I would like to have you fully cover these points that I have brought out. If it is possible for us to come here, the people representing this great city and you representing this corporation, to have it in the record here, what you are willing to accept and what they are willing to give, I would like to have it appear here, and see if that part of the issue can not be disposed of.

Mr. McCUTCHEON. It can not, and I will develop to you why.

Mr. MARSDEN D. MANSON. I would like to ask Mr. McCutcheon if the city has, in conformity with the only law that it can act under, solicited an offer of sale from the company? No officer of the city

can offer a price or make any offer whatever to the Spring Valley Water Company for their properties. They are limited by a charter, an organic law, which prescribes that they shall solicit an offer of sale, and that has been done.

Mr. McCUTCHEON. If you will have patience a little while, Mr. Manson, I will come to that feature of the discussion. I now want to answer the questions of Senator Flint with reference to the position of the Spring Valley Water Company in the event that the city becomes its competitor. Now, I have cited this constitutional provision, which is probably the most drastic provision that can be found in the law of any State of this Union, with reference to rates to be collected by public-service corporations.

I have told you that that provision is that any company collecting rates otherwise than as so established shall forfeit its works and franchises to the city for the public use. Now, as I have said, that means that it can neither collect a higher nor lower rate.

Senator SMOOT. The city did, however, have a dispute with your company, and the city forfeited your property.

Mr. McCUTCHEON. Yes, sir.

Senator FULTON. Attempted to do so.

Senator SMOOT. On the ground that you charged more than the price that they suggested?

Mr. McCUTCHEON. Senator, would you object to my postponing the answer to that question for a few moments?

Senator SMOOT. Not at all, if you will only come to it.

Mr. McCUTCHEON. Yes; I will get to it in a moment. I wanted to answer Senator Flint's question with reference to the position which the company would occupy if the city became its competitor.

Now, let us understand that if the company collects a rate one cent higher or one cent lower than the rate fixed by the public agency it subjects itself to the forfeiture of its franchises and property.

Of course, you understand that if the city engages in the business of purveying water it does not exercise its governmental function. It exercises its private and proprietary function purely. You understand also that if it engages in a business of that kind and there is a deficit, that deficit may be paid out of the public treasury through the medium of general taxation. I may add that while under the law of California property of this public-service corporation, the Spring Valley Water Company, must be taxed, under the same law if the city acquires a publicly owned or municipally owned plant its property will not be taxed, but will be free from taxation.

Senator NEWLANDS. What do the taxes of the Spring Valley Water Company amount to?

Mr. McCUTCHEON. About \$375,000 a year.

Mr. MANSON. Does not the city pay those?

Mr. McCUTCHEON. Yes; the city pays them in this way, that they are part of the operating expenses of the company; but when the city becomes the company's competitor, will it pay them?

Mr. MANSON. I hope that horrible condition of affairs will not be brought about.

Mr. McCUTCHEON. Oh, yes; no doubt you do; but you want this grant first, in order that, as you said in your formal resolution, which I will read to you (your formal resolution passed in 1900), after you get

this grant you want to say to the Spring Valley Water Company, "If you will sell your property for what we consider it to be worth, we will buy it; but if you do not, we will resolve it into agricultural land simply." And it is that condition which I submit this committee should not permit itself to be used to bring about. But that is a little aside from the present line of my argument.

As I said to you, the city may pay not only the deficit arising from the operation of its water property out of general taxation, but it may pay the cost of the construction of its property out of general taxation. The city can tax the property of the Spring Valley Water Company to raise the money necessary to accomplish those purposes. Now, see the picture that is presented. Upon the one hand is the power of rate regulation, by the terms of which, if this company does not conform to the rates established by the public agency, it forfeits its works and franchises to the city of San Francisco for the public use. There is no provision by which the city will be compelled to name the same price for the property which it offers for sale.

The CHAIRMAN. I should like to ask you a question in this connection, before we go further. Since the city inaugurated this move for the securing of a reservoir in Hetch Hetchy before the Secretary of the Interior has your company made an offer to sell your property to the city at any price?

Mr. McCUTCHEON. Yes; I will come to that, Mr. Chairman, later on. I will develop it fully.

Senator FLINT. Your complaint, as I understand it, is that the city could fix the rate on your property. Now, you admit that you have the same right to appeal to the courts if the city engages in the business as you have now?

Mr. McCUTCHEON. On certain conditions; yes.

Senator FLINT. So then you would have the same relief, after the city has engaged in distributing water, as you would have if the city was not engaged in distributing water?

Mr. McCUTCHEON. No, sir.

Senator FLINT. Other than this one proposition, which it seems to me is entirely separate and apart from that, that the city as a competitor of yours, engaged in the same line of business, might distribute their water cheaper than you do?

Mr. McCUTCHEON. Yes; might distribute it and pay for it through general taxation.

Senator SMOOT. And of that taxation the Spring Valley Water Company would have to pay a part?

Mr. McCUTCHEON. Yes.

Senator DIXON. Would not that be a confiscatory rate?

Mr. McCUTCHEON. I think not.

Senator HEYBURN. I think I did not fully develop the idea I intended to present. Should not this question be discussed as a practical proposition from the standpoint that there will be no competition; that if the city comes in the other company necessarily goes out? Then why discuss it from the standpoint of competition?

Senator FULTON. Why is that so, that the other company must necessarily go out?

Senator FLINT. I think it really comes down to a difference of a comparatively small sum of money, as between the city and this

company. The real contest is over a difference of a few million dollars. That is all there is involved, as I view it, from the standpoint of the Spring Valley Water Company.

Senator FULTON. That does not appear yet.

Senator HEYBURN. Mr. Chairman, I suggest this proposition, that if we are to discuss this from a standpoint that there will be no competition, then the question arises, should Congress be asked to put itself in the position of compelling any transaction at all between the city and the Spring Valley Water Company? Ought we not to be left out of that proposition? We are not here to arbitrate that question.

The CHAIRMAN. I want to suggest one thing to expedite the hearing, and that is to let the speakers go on, limiting ourselves to questions. When it comes to arguments between the members of the committee, we had better reserve that until our executive session.

Senator HEYBURN. Mr. Chairman, I see the point of your remark, but this hearing might be prolonged indefinitely if we were to undertake to settle all possible questions that might arise.

The CHAIRMAN. That is true.

Senator HEYBURN. But it seems to me entirely pertinent and proper, in the interest of getting at the point that we are to determine (not that this company and the city may be called upon to determine), to make such suggestions to the gentlemen presenting the case as will eliminate extraneous questions.

Senator FLINT. As Mr. McCutcheon has his argument which he desires to make, and as there are a great many questions to discuss, I think it would be well to let him go on in his own way, as his time is limited.

Senator SMOOT. As far as I am concerned, I could spend all the afternoon and all the evening in this matter if necessary, because I do not want to do the Spring Valley Water Company or any other citizen any harm, nor do I want to do any harm to the city.

Senator FULTON. I do not think we can pretend to direct the line of anybody's argument, though we may limit the time; but I am not very much in favor of a strict limitation of time. We are supposed to give everybody ample opportunity to be heard.

The CHAIRMAN. Proceed.

Mr. McCUTCHEON. I have no disposition to discuss matters which members of the committee deem to be irrelevant. I was simply developing the case as it seemed to me it should be developed.

Senator FULTON. I think myself that is all right.

Senator HEYBURN. I want information that will enable me to apply the argument.

Mr. McCUTCHEON. I was coming to the point, that the city would not be compelled to collect the rates which the water company would be compelled to collect. The city may pay through general taxation any deficit that arises, and may also pay the cost of the works in the same way, and that general taxation will include the property of the company.

Now, I was about to say that it is a violation of common right, and it should require no authority to support it, that one corporation engaged in competition with another should be permitted to fix the price which that other corporation may charge, and subject the property of the corporation to the payment of any part of the expense incurred by the competitor who fixes the rate.

Senator FLINT. Is not that question now before the Supreme Court, and has it not been decided?

Mr. McCUTCHEON. It has never been decided.

Senator FLINT. Has it not been raised in the Edison case, where the city of Pasadena has engaged in electric lighting, and the Edison Company raises the question?

Mr. McCUTCHEON. No; one phase of it has been raised. The phase that has been raised is this, whether, the Edison Company being entitled to the equal protection of the law, it is permissible for the city of Pasadena to engage as a competitor with it in the lighting business. The Edison Company is not a domestic corporation, and is not acting under section 19 of Article XI of the constitution of California of 1879, with which you are familiar. So that the sole and only question presented in the Edison case is whether, on account of the fact that the property of the Edison Company will be taxed and the property of the city will not be taxed it is competent for the city to engage in competition with it. My question, as you see, goes much further than that. Now, to come to the answer—

The CHAIRMAN. But, Mr. McCutcheon, does not your argument as a whole lead to this proposition, that if the city has heretofore given the right to a private company to establish waterworks and collect rates, and so forth, and the city afterwards concludes that it will carry on that business itself for the benefit of all its inhabitants, why should not the city have an opportunity to go into that business? Or should it be forever barred because there is a private company engaged in that business? Would you bar the city of San Francisco from adopting a water system of its own simply because there is a private company which you represent that is engaged in the business? Or would you have that company remain as a permanent veto upon that enterprise?

Mr. McCUTCHEON. No, Senator; that has been decided over and over again. It has also been decided that wherever there has been an arrangement between a municipality and a public-service corporation by which the public-service corporation could occupy the streets and the municipality should have the right to fix the rates, that whenever the municipality saw fit to engage in the same business the right to regulate rates ceased. That is not our situation. We have a constitutional provision which imposes upon the public agency the duty of fixing rates for all time, upon penalty of removal from office. So that obligation would continue after the city had itself engaged in the same business.

Senator SMOOT. Or, in other words, the city could compel you to charge \$1 per month for a house, and they could charge 50 cents for the same house, even if it was below cost, and the people would be taxed to make up the difference?

Senator DIXON. But such an arrangement as that would be confiscatory, and the company could show it in court.

Senator HEYBURN. Mr. Chairman, I do not see how this committee can properly interest itself in this question. I do not see that it has anything to do with the propriety of granting the right to the city to take this water. That should be decided entirely free from any controversy between the city and any other corporation. That belongs in the courts and not in this committee.

Senator FLINT. That is my own view about it, and that would apply to a great many other bills that I have had in connection with

this same subject; but I feel that we ought to let Mr. McCutcheon proceed in his argument in an orderly way, and then we can discuss the others afterwards.

Senator HEYBURN. I am not inclined entirely to withhold an expression of my views on it. I do not desire to interrupt Mr. McCutcheon, and I am pleased to hear his argument; but nevertheless the committee must consider how far it will go into this question.

Mr. McCUTCHEON. I have about concluded, so far as that branch of the case is concerned, Senator; but I wanted to say this: It seems to me that it is a very important matter for this committee to consider whether or not, assuming that the position which I have taken is correct, if the city does what it proposes to do, it would be a violation of the constitutional right of this company, whether Congress should lend its aid to the city to enable it to violate that constitutional right.

Senator HEYBURN. And the courts would determine that.

Senator SMOOT. I want to know whether it is possible for San Francisco to get water other than from the Hetch Hetchy Valley.

Mr. McCUTCHEON. I am coming to that now.

I said to you a while ago that from 1880 until about 1900 there was no complaint by the company of the rates enacted by the public agency, with the exception of the year 1882.

In 1897 Mr. Phelan, who appears here as the representative of San Francisco, became mayor of San Francisco.

Senator DIXON. In what year?

Mr. McCUTCHEON. In 1897. For a period of years before that the water rates had been practically uniform. In 1897 a cut was made, which I can illustrate by one example from the rate schedule. For instance, for a house or building for which the rate that was charged had been \$1.45 a month, the rate was fixed at \$1.20.

The rates had been practically uniform until 1897, when Mr. Phelan became mayor.

Mr. PHELAN. If I may interrupt the gentleman, what part does the mayor take in fixing the water rates of the city of San Francisco? Are they not fixed by the board of supervisors over which he has no control?

Mr. McCUTCHEON. Yes; but these ordinances were all signed by the mayor.

Senator FULTON. I suppose the only question is what was done. It is not a question how it was done.

Mr. PHELAN. This is entirely aside from my appearance here for the city.

Mr. McCUTCHEON. But I am only stating the fact, and I am stating it from the record. There was a reduction from \$1.45 to \$1.20, which you will see was about 25 per cent, in 1897. In 1900 there was a horizontal cut from the last schedule—a reduction of 10 per cent. In 1903 there was another horizontal cut of substantially 10 per cent. I speak now of the rates to private consumers. For the first three years of Mr. Phelan's administration the hydrant rate for water supplied to the city for fires was \$5 per month per hydrant. In 1901 there happened to be a deficit in some department of the city government. They needed \$140,000, for which provision had not been made, and by way of generosity to the city they took that \$140,000 off from the hydrant allowance, which for the previous three years of Mr. Phelan's administration had been made to the water company; and

whereas the hydrant allowance for those three years had been \$240,000, they reduced it that year to \$80,000. There was no increase in the rate to private consumers. As I have said, during the previous three years the rate was \$5 per month per hydrant, and they reduced that rate to \$2 per month per hydrant for the year 1902. In 1904 they reduced the rate to \$1 per month per hydrant.

Senator NEWLANDS. Did they make any increase in the other rates?

Mr. McCUTCHEON. On the contrary, they decreased the other rates.

I told you that in 1900 they decreased the rates to private consumers by a horizontal cut of about 10 per cent.

Senator HEYBURN. Was that contested by the company?

Mr. McCUTCHEON. Yes. I will come to that later. I am coming to the question in the minds of some of you gentlemen as to the price of this stock, and I think I can develop to you why the stock fell. Senator Newlands asked me whether they increased the rates to private consumers.

Senator NEWLANDS. Yes.

Mr. McCUTCHEON. Not only did they not increase those rates, but they reduced those rates. I stated to you that in 1900 they made a reduction of about 10 per cent. In 1903 they made another horizontal cut in private rates of about 10 per cent, and in 1904 they reduced hydrant rates to \$1.

Now, not only did they do that, but they made the last reduction after Judge Morrow, upon an exhaustive hearing, at which both sides were heard, not only by argument but by an extensive showing on affidavits, had held that the 1903 rate was confiscatory, and issued a preliminary injunction restraining the enforcement of that rate. So little respect did this board of supervisors have for the order of Judge Morrow that during the rate-fixing period the following year they not only did not increase the rate which he had found to be confiscatory, but they reduced it.

Senator NEWLANDS. That was under the Schmitz Board, was it not—that last one?

Mr. McCUTCHEON. No, sir; it was not under the Schmitz Board. I will come to the Schmitz Board later.

Senator SMOOT. Did the company collect just those rates which you have named?

Mr. McCUTCHEON. Not those late rates. They collected higher rates, and they did so under the protection of an injunction. I will come to that later on.

I may say here that it has been said (I do not know whether before this committee or not, but it has been repeatedly stated) that this corporation was a grinding monopoly. Of course, it must appear to you that in the nature of things it can not be a monopoly when its rates are fixed by the public agency. At any rate it can not be a monopoly so far as rates are concerned. From 1903 to the present time the rates which we have collected have been collected under the protection of an injunction issued annually by the circuit court of the United States, and in each case, with one exception, upon an exhaustive showing, made by the city and the company. Notwithstanding that fact, the representatives of San Francisco have stood in this Capitol, before this committee, and before the committee of the House, and have charged this company with being a grinding monopoly. Another suggestion which has been made is that this

corporation endeavored to use Mr. Ruef for the purpose of imposing upon the city of San Francisco.

I have given you the experience of the company during the period of years when Mr. Phelan was at the head of the city government.

In 1906 the so-called Schmitz or Reuf Board took office. Now, I leave it to you to determine, from your general knowledge of affairs, whether it is possible, had this company been so inclined, it could have obtained a rate from the Reuf or Schmitz Board. Not only did it not get a rate from that board, but that was the board that passed a formal resolution forfeiting the works and franchises to the city for the public use. What the reason for that was, I leave it to you to speculate.

Senator FULTON. What company was it that paid Heney \$30,000? You do not have to answer that. It is not relevant.

Mr. McCUTCHEON. I was going to say, Senator, that that has been the subject of a good deal of discussion, but so far as the publications in the press are concerned there has been comparatively little information about it. To answer Senator Smoot's question as to what rates the company did collect, I told you of those cuts which began with the incumbency of Mr. Phelan in 1897. In 1902 the company filed a bill in the State court to set aside the rate schedule as confiscatory. Most of you gentlemen are lawyers. I do not know but that you all are, and you know the time necessarily consumed in preparation for a trial of that magnitude. It was necessary that the company should have its property examined by experts and engineers, and before it could prepare to present its case, the year for which that schedule had been enacted had practically expired, and the bill was dismissed without issue having been joined.

The next year, in conformity with the policy which had previously been pursued, another cut was made, and that year the company filed a bill in the circuit court of the United States and made an application for an injunction.

That came on for hearing before Judge Morrow. As I have said to you, the subject was exhaustively presented. Judge Morrow issued a preliminary injunction restraining the enforcement of the rate schedule.

The following year, as I have already said, instead of paying heed to Judge Morrow's ruling, they made another cut, and again the company filed a bill in equity in the circuit court of the United States, and this time the hearing was before Judge Gilbert, circuit judge. After an exhaustive hearing Judge Gilbert issued an injunction.

The next year, 1905 (I have not the record here), they made another cut. I will not say that positively because I have not the record before me, but it is my impression that they did. Suffice it to say that in 1905 they did not make any higher rate than they made in 1904. In other words—

Senator NEWLANDS. This was all before the earthquake?

Mr. McCUTCHEON. This was all before the earthquake.

In other words, they still refused to heed the opinions of those two circuit judges. In 1905 they passed a rate schedule no higher than the rate schedule in 1904, and again the company filed a bill in equity in the circuit court of the United States and made an application for an injunction, which was heard by Judge Gilbert, and again a preliminary injunction was issued.

Now, bear in mind that none of these injunctions was issued except upon a hearing. Not one of them was issued ex parte.

Senator FULTON. Did they appeal from any of these decisions?

Mr. McCUTCHEON. No, sir. I may say in fairness that the time was so short that I do not know that they could have appealed and had the appeal heard. I do not know that I developed to you the fact that under this constitutional provision these rates can only be enforced for one year. They expired by operation of law with the expiration of the year. So it may very well have been deemed by the legal representatives of the city that it would be fruitless to pursue an appeal.

Now, coming to the question of Senator Newlands, in 1906 we had the Ruef Board. As I said to you, I leave it to you to speculate whether if this company had been so inclined it could have gotten a rate from that board. That board, with all of these court records before it, made still another and a horizontal cut in the water rates.

Senator DIXON. Was the company paying dividends all this time?

Mr. McCUTCHEON. No; I will state to you now, in order that you may have it in mind, that for the period of seven and a half years prior to the 1st of January, 1908, the net result to the stockholders of this company was a dividend of 1.95 per cent per annum upon stock of the nominal par value of \$50. In other words, for a period of seven and one-half years the net result to this company, of which it has been said that the representatives of the city of San Francisco have always treated it with fairness, the net result to the stockholders of the company was an annual dividend of 97½ cents per share. Now, I take into consideration in arriving at that result the fact that the stockholders paid an assessment of \$3 per share. But that would not make very much in the sum total for the seven and one-half years.

Mr. PHELAN. That was after the earthquake.

Mr. McCUTCHEON. It makes no difference when it was, but we will say it was after the earthquake. It was, in fact; but what had been their experience before the earthquake? What dividends had they paid before the earthquake? In 1897, when Mr. Phelan became mayor of San Francisco, this stock sold on the market at above par and was considered one of the most desirable investments to be had. Do not take my statement for the fact, but ask Senator Newlands, who was entirely familiar with the situation in those days.

Senator NEWLANDS. Not at that time. My familiarity with it was long before that.

Mr. McCUTCHEON. It sold very nearly at par in 1897.

Senator NEWLANDS. I mean to say I was not the attorney of the company at that date.

Senator DIXON. What dividend was paid?

Mr. McCUTCHEON. About 6 per cent in 1897. It was selling at par. Yet afterwards they tell you it sold at \$22.

The CHAIRMAN. Was not that owing somewhat to the earthquake?

Mr. McCUTCHEON. To an extent, yes.

The CHAIRMAN. You can not charge that to this matter?

Mr. McCUTCHEON. To an extent, yes. It had dropped to \$38 before the earthquake. Taking 100 as par, it had dropped to 76 before the earthquake. Do you wonder that it had dropped?

Senator HEYBURN. What is the capitalization of the company?

Mr. McCUTCHEON. Twenty-eight million dollars. I do not know that the Senator was here the other day when I explained that under our law the indebtedness of a corporation can not exceed its capital stock. In order to keep pace with the demands for water in San Francisco, it was necessary for this corporation from time to time to raise funds. Those funds were raised by the issuance of bonds. The company had about reached the limit of the indebtedness which it could create. In addition to that the term of its existence as fixed by its charter, which was fifty years, was about to expire. It was deemed advisable to form a new corporation. The name of the old corporation was the Spring Valley Water Works, and a new corporation was formed, called the Spring Valley Water Company. The Spring Valley Water Works had a capitalization of \$14,000,000. The capitalization of the Spring Valley Water Company was made \$28,000,000.

Senator NEWLANDS. Was that the stock or bonds?

Mr. McCUTCHEON. Of the old corporation, \$14,000,000 stock.

Senator NEWLANDS. And about the same amount of bonds?

Mr. McCUTCHEON. Yes; about the same amount of bonds. Its bonded indebtedness was about equivalent to its capital stock, and that was one of the reasons for the formation of the new corporation. The capitalization of that new corporation was made \$28,000,000, and the stockholders received two shares of the stock of the new company for one share of the stock of the old company.

Senator HEYBURN. That increased their capacity to issue bonds?

Mr. McCUTCHEON. Yes.

Senator DIXON. How much of that original \$14,000,000 in capital stock had been paid in? Had its value been built up by improvements made from earnings or had it been paid into the treasury originally?

Mr. McCUTCHEON. It had been paid into the treasury in part and partly from earnings.

Senator DIXON. How much had really been paid into the treasury?

Mr. McCUTCHEON. The showing that was made in the last injunction suit which we had (and I may say that that showing was confirmed by a representative of the city) was that the actual investment was something over \$28,000,000.

Senator DIXON. In cash paid for stock and bonds?

Mr. McCUTCHEON. In cash paid for stock and bonds.

Senator SMOOT. What is your bonded debt?

Mr. McCUTCHEON. Our bonded indebtedness is rising seventeen and a half million dollars.

Senator NEWLANDS. You have increased your bonded debt since the new company was formed from about \$14,000,000 to \$17,500,000?

Mr. McCUTCHEON. Between seventeen and one-half million and eighteen million.

The CHAIRMAN. Then you have seventeen and a half million dollars bonds and how much in stock?

Mr. McCUTCHEON. Nominally \$28,000,000 in stock, but we treat the stock—

The CHAIRMAN. And when you absorbed the Spring Valley Water Works, which was your predecessor—your company absorbed that in 1858, did it not?

Mr. McCUTCHEON. No; not in 1858, but in 1903.

The CHAIRMAN. When you absorbed that you gave two shares of stock in this new company for one share of the old?

Mr. McCUTCHEON. Yes.

The CHAIRMAN. Was one share of the old stock worth 200 per cent? Was not that a stock inflation pure and simple?

Mr. McCUTCHEON. In a sense it might be said to be a watering of stock, but as I told you, the purpose of that was twofold; first, because the company had reached its limit to issue bonds; secondly, because its term of existence was about to expire. Now, in order that the company might issue more bonds and so enable itself to extend this system, it was necessary that the capital stock should be increased, and that was the purpose of that increase. But let me say——

The CHAIRMAN. But all they paid for it was to give one share of the old stock for two shares of the new.

Mr. McCUTCHEON. Yes.

The CHAIRMAN. There was no money passed.

Senator SMOOT. Mr. Chairman, before the stock was increased its value was more than \$100 a share, but as soon as the new stock was issued, two shares for one, the value dropped to \$50 a share.

The CHAIRMAN. What evidence have you of the value of the old stock? Your predecessor was a company that was in litigation, and the stock of the old company was not at par when you took it. It was way below par.

Mr. McCUTCHEON. You are quite right about that. We have never treated the new stock as having a par value above \$50.

Senator SMOOT. He says they only treated it as \$50 a share.

Mr. McCUTCHEON. They only treated it as \$50 a share. It was simply to comply with that technical provision of the statute.

Senator NEWLANDS. In all your computations, in the courts and with the city, and so forth, you have ignored that extra \$50 entirely?

Mr. McCUTCHEON. Entirely.

Senator NEWLANDS. And have treated the stock as worth \$50?

Mr. McCUTCHEON. Yes.

Senator SMOOT. I understood Mr. McCutcheon to say that in 1897 the stock was at par. My impression is——

Mr. McCUTCHEON. It was a little above par; at any rate the stock had sold for as high——

Senator DIXON. It does not affect it except in an equitable sense; but was this original \$14,000,000 of stock in the old Spring Valley Water Works actually paid for in cash? Had there been \$14,000,000 paid into that company for stock?

Mr. McCUTCHEON. I could not tell you that, Senator, whether——

Senator DIXON. Generally or approximately?

Mr. McCUTCHEON. The president of the company stated that the amount which had actually been paid in was \$28,000,000. That would be about \$4,000,000 short of par.

Senator DIXON. That is in the new company?

Mr. McCUTCHEON. No, sir; in the old company. The most of the construction was by the old company.

Senator FULTON. That is, stock and bonds, \$28,000,000.

Mr. McCUTCHEON. The stock and bonds of the company should represent an actual investment approximately of \$32,000,000. The

showing was that \$28,000,000 had been invested, and that for much of the time the company had not received any dividend on its investment.

Senator DIXON. Do you state to this committee that the \$14,000,000 of stock in the old company had been paid for in cash?

Mr. McCUTCHEON. No; I do not state that. I state this to you—

Senator DIXON. That is what I want to know.

Mr. McCUTCHEON. I state this to you, that the cash investment was more than \$28,000,000.

Senator FLINT. Do you mean actually paid in, or from earnings?

Mr. McCUTCHEON. Some of this stock may have been sold at less than par. I presume probably it was. It would have been quite natural that it should in a new enterprise of that kind.

Senator SMOOT. In the beginning?

Mr. McCUTCHEON. In the beginning; so that the investment might not be as large as would be indicated by the par value of the stock. I do not claim that.

Senator DIXON. In other words, did you capitalize the earnings of the company and issue stock for them—this \$14,000,000?

Mr. McCUTCHEON. I am inclined to think that was done. I am not familiar with the history of the matter in that early day.

Senator DIXON. Approximately, how extensively was that done?

Mr. McCUTCHEON. I can not tell you.

Senator NEWLANDS. I can give you some history of that. When I was familiar with the affairs of the company, about 1880, the capital stock of the Spring Valley Water Works was \$8,000,000, and it had at that time, if I recollect aright, a bonded indebtedness of about \$5,000,000 or \$5,500,000. Later on they increased that capital stock from \$8,000,000 to \$14,000,000, and that stock was paid for by the stockholders at approximately par.

Senator DIXON. That is, in cash.

Senator NEWLANDS. Yes; that is my recollection. Then they increased their bonded indebtedness from \$5,500,000 to \$17,500,000, the bonds being sold approximately at par. So that the only question is whether this \$8,000,000 of stock which was in existence when I was familiar with the affairs of the company had been paid for in actual cash by the stockholders.

Senator DIXON. Had that been paid for in cash?

Senator NEWLANDS. My recollection is that that stock at that time had been paid for partly in cash by the stockholders and partly by accumulated earnings that had gone into the works.

Senator DIXON. Do you know the actual approximate cash paid for the stock and the actual approximate amount paid for by earnings?

Senator NEWLANDS. I do not remember the actual approximate cash, but from what counsel says it was shown that \$28,000,000 in actual cash had been invested in the works. I should assume that of the \$8,000,000, \$4,000,000 had been actually subscribed by the stockholders and that the balance of the \$8,000,000 was probably earnings or possibly water.

Senator SMOOT. In other words, this is about the way it stands today: The bonded indebtedness of the company is \$18,000,000, the stock is \$14,000,000 (that is, the original stock), making \$32,000,000, and it is shown that there is \$28,000,000 actually paid in in cash. Now, there is that \$4,000,000 somewhere.

Senator DIXON. Water.

Senator SMOOT. Unaccounted for.

Senator DIXON. Either water or accumulated earnings. That is about the size of it.

Mr. McCUTCHEON. I do not know whether you were here when I said that for a period of six years the stockholders received no dividends whatever. So if that was accumulated earnings that went in, it was to all intents and purposes capital paid in.

Senator DIXON. They paid one Dutch dividend.

Mr. McCUTCHEON. They paid one Dutch dividend during that time, though they were sometimes called Irish.

Senator NEWLANDS. I remember the stock stood at 110 at one time when I was familiar with its affairs. The stock stood at the time of the earthquake at about 76; that is to say, about \$38 a share for the new issue.

Senator DIXON. Who controls the stock at this time?

Mr. McCUTCHEON. I am perfectly willing to answer that, and I desire to say to you that I shall not plead my privilege to any question that you ask me.

Senator DIXON. That really makes no difference.

Mr. McCUTCHEON. It has been suggested that this stock has been absorbed by speculators. There are between 1,600 and 1,700 stockholders of the Spring Valley Water Company, and from the record more than 80 per cent of those stockholders owned the same number of shares before the fire.

Senator DIXON. Does any one person or interest control a majority of the stock?

Mr. McCUTCHEON. Absolutely and unqualifiedly, no.

Senator HEYBURN. What was the date of the organization of the new company?

Mr. McCUTCHEON. In 1903.

Senator HEYBURN. Have the stock and bonds of the old company been retired or taken up under the proffer of exchange?

Mr. McCUTCHEON. I think almost entirely, practically so.

Senator HEYBURN. And the old stockholders have accepted the reorganization?

Mr. McCUTCHEON. They have accepted the reorganization, and also the old bondholders.

Senator NEWLANDS. Why, in making this new issue of stock, did they not sell stock as well as bonds?

Mr. McCUTCHEON. At that time, Senator; the stock had dropped to \$78 or \$76, or the equivalent of \$38 for the present share, and it is extremely doubtful whether they would have been able to sell any large quantity of bonds at anything approximating par.

Senator DIXON. You mean stock?

Mr. McCUTCHEON. No; I mean bonds, Senator. Most of the bonds were exchanged with holders of the old bonds. And I want to say in passing that although the representatives of the city of San Francisco admit that the bonds of this company are secured by a margin of at least \$8,000,000; in other words, the representatives of the city of San Francisco admit this property to be worth \$25,000,000, and the bonds are less than \$18,000,000, yet the bonds are selling on the market to-day for \$84 or \$85, and that is not due to the earthquake.

Senator DIXON. What interest do they pay?

Mr. McCUTCHEON. Four per cent.

Mr. PHELAN. That is equivalent to a 5 per cent investment. You can not do better than that.

Mr. McCUTCHEON. You can not?

Mr. PHELAN. No.

Senator SMOOT. You can with New York securities.

Mr. PHELAN. You can not sell the bonds of a public utility corporation anywhere in the country to-day better than that.

Mr. SMOOT. I think so.

Senator FLINT. I do not think there is a public utility corporation that is selling its bonds for less than 5 per cent.

Mr. McCUTCHEON. Is that a result of the treatment of public utility corporations by rate-fixing bodies?

Senator FLINT. No; the condition of the money market largely.

Senator DIXON. Is that water system there a gravity system or a pumping system?

Mr. McCUTCHEON. Mostly gravity. Mr. Schussler, the engineer of the company, is here and can explain that more in detail.

Senator NEWLANDS. You stated that in 1905 or 1908 the total consumption of water in the city was about fifteen or sixteen times as great as it was in 1864.

Mr. McCUTCHEON. Yes.

Senator NEWLANDS. Do you know what the population of the city was in 1864?

Mr. McCUTCHEON. Do you recall that, Mr. Schussler?

Mr. SCHUSSLER. I think not far from 100,000.

Senator NEWLANDS. And while the population has increased five times, their consumption of water has increased fifteen or sixteen times?

Mr. McCUTCHEON. Yes.

Senator NEWLANDS. Now, taking that increase in water supply during that period, amounting to sixteen times, do you remember what the investment in the company was in 1864?

Mr. McCUTCHEON. I have the details of that in the complaint which I prepared to file with the circuit court, but I can not carry the figures in my mind. It was about \$6,000,000.

Senator NEWLANDS. And fifteen times \$6,000,000 would be \$90,000,000.

Mr. McCUTCHEON. Yes.

Senator NEWLANDS. That would indicate that you are increasing annually the supply to the city, and all the time diminishing the cost.

Mr. McCUTCHEON. Unquestionably, as well as the cost to the consumer. I may say that prior to the fire our dividends did not aggregate 4 per cent for a period of five or six years, to say nothing of the loss by assessment and the loss by decreased revenue immediately following the earthquake.

I was coming back to the suggestion (because it seems to have found lodgement in the minds of some of you gentlemen) that it was represented that the stock of this company had been absorbed by speculators, and that while it had been absorbed at \$22 a share, the city had in good faith made an offer of \$50 a share to the company, and the company had refused to accept that offer. Now, I assume that this statement was made before you at your first meeting, because it was repeated by Senator Dixon yesterday as having emanated

from Mr. Phelan, and Mr. Phelan made no correction of the statement. I undertake to say to you that not 2,500 shares of this company were ever sold at \$22 a share. It is true that some stock was sold at \$22 a share. It is true that there were a lot of small holders who, realizing the treatment which the company was receiving at the hands of the municipality, thought it was extremely doubtful whether the time would come when they would ever be able to get out of the stock what it was worth.

I may tell you also that the investments in this stock are not, as a rule, by people of large means, but, on the contrary, they are by people of comparatively small means. These gentlemen who appear here asking for this grant have the credit, and also the glory, if there is any glory in it, of having forced that stock down to a figure ridiculously below its value and having forced the poor owners of it to sell for what they could get. Of course there was somebody in the market who would take the stock at that price. Of course there were people in the market who knew the stock was worth more and were ready to buy it at that price; but, as I say to you, the sales at that price were extremely small, and I say to you without qualification what I said a while ago—that 80 per cent of the owners of the stock of to-day are the same as they were before the fire.

Now, to come to the other suggestion, that the city of San Francisco has tried to buy this property at the rate of \$50 a share and that the company has refused to meet it halfway—

Senator FLINT. When you say 80 per cent of the owners of the stock, do you mean 80 per cent in number?

Mr. McCUTCHEON. Eighty per cent in shares.

Mr. PHELAN. That is, as evidenced by the stock books of the company?

Mr. McCUTCHEON. Yes.

Mr. PHELAN. As a matter of fact many transfers take place which are not recorded on the stock books of the company, but the shares pass in the name of a trustee, from hand to hand.

Mr. McCUTCHEON. Now, do we understand that this unsupported statement that the stock has not been transferred is to be taken by this committee as evidence in support of the statement that the stock has been absorbed by speculators? Are you going to take this unsupported statement, made in vindictiveness, and because of unfriendliness to this company, or are you going to take the statement of the record of the company? I challenge proof of the statement that any such condition exists, or ever existed. The statement has no place in this committee. It is not true, and it never should have been said, and I now challenge proof of any portion of it. I know whereof I speak. It was made for a purpose. It was made by men who have stood before this committee and have stood before the House committee and proclaimed their friendship for the Spring Valley Water Company and its stockholders. It was proclaimed by men who have asked you to give them this grant, upon the promise that they would treat with fairness the Spring Valley Water Company. God save the stockholder who is turned over to those men to receive fair treatment. I will give you an evidence, from the records of San Francisco, of the fairness with which they would treat this company.

Senator DIXON. You made the statement a while ago that during Mr. Phelan's administration the rate on hydrants was cut down to

\$2.50. Had not the rate been \$2.50 immediately before Mr. Phelan came into office?

Mr. McCUTCHEON. Yes; they had cut it to \$2—not \$2.50—but their private rates were very much higher when the hydrant rate was \$2.50.

Mr. PHELAN. I will answer that when I have my time.

Mr. McCUTCHEON. Oh, that mine enemy would write a book! I stated that I would show to you from the records of San Francisco the sort of fairness which it might be expected this company would receive from the board of supervisors of San Francisco if this grant were passed.

It has been said to you, and it has been said repeatedly during the course of these proceedings, that the city and county of San Francisco had tried in good faith, but ineffectively, to induce the company to name a price upon its property. I denounce that. There were two so-called efforts made by the city of San Francisco to induce this company to name a price upon its property, and I propose to read to you a portion of the first.

Senator FULTON. What do you read from?

Mr. McCUTCHEON. From the municipal reports of San Francisco for the fiscal year beginning July, 1900, and ending June, 1901. Bear in mind that the city wanted this plant and that it wanted to pay a fair price for it. That is the statement which is made by the representatives of the city.

Mr. PHELAN. In 1909?

Mr. McCUTCHEON. Yes; and this was 1900, when Mr. Phelan was mayor of San Francisco, and Mr. Phelan is now the spokesman for San Francisco. They passed a resolution calling upon the company to name a price upon its property, and here is the last paragraph of it:

The Spring Valley Water Company is also requested to bear in mind that any overvaluation of its water system will compel the people of San Francisco to look elsewhere for their water supply, and the withdrawing of San Francisco as a market for the sale of the company's water will reduce the value of the company's lands to what they are worth for agricultural lands merely.

How eminently fair that is, to call upon a public-service corporation which has been supplying the needs of San Francisco for nearly forty years before that time, and say to it, "We want you to name a price upon your property, but if you are guilty of any overvaluation, we want you to know that we will go elsewhere for a water supply, and when we withdraw our market from that property it will have the value of agricultural lands merely." Now this was in 1900. Just push it along to 1908.

The CHAIRMAN. Did you make any response to that?

Mr. McCUTCHEON. Yes; I will come to that.

The CHAIRMAN. Did your company make any offer?

Mr. McCUTCHEON. The company responded to that letter, saying that the application was not in accordance with the provision of the charter; that if they would make application in accordance with the provision of the charter, the company would name a price. I read you further from the record of the city:

This proposal—

Referring to the proposal of the company—

does not carry with it a specific offer of sale. The water company, however, says that under due proceedings it would be willing to submit an offer of its entire system, or in lieu of an offer it would agree to submit the determination of the value to a board of arbitration.

One of the Senators stated here that it had been said that the city had proposed to submit the question to arbitration and that the company had declined. The boot is on the other leg. The company proposed to submit the question to arbitration, and I state to you that no response was ever made to that proposal. The city never replied to that.

Mr. PHELAN. The city has no power to arbitrate.

Mr. McCUTCHEON. We will come to that later. If the city has no power to arbitrate, what power have these representatives of the city to tell you that they will treat the company fairly? What evidence have we that there is any disposition to be fair? Does this last clause of the resolution, threatening to convert the property of the company back into agricultural land, look like fairness? And do you wonder that we receive with some grain of suspicion their statement that they intend to be fair now?

The CHAIRMAN. It seems to me this discussion is a little academic. Let us come down to recent events. Has your company recently, since the city attempted to get this water supply, made a fair effort to sell out to the city, or has the city made any fair proposition to you to buy you out? Has there been any negotiation on either side, or any attempt at it?

Mr. McCUTCHEON. Yes.

The CHAIRMAN. Come to that. There is no use going back to this matter and discussing Mr. Phelan's record or the record of those past events. The question now before us is as between the city of San Francisco and your company. Why should not the city of San Francisco have a right to obtain and acquire its own water supply at this time? Assuming that all you say as to the past is correct, that you have been badly treated, let us look at it from the present standpoint. I only suggest that. I do not want to stop you in your discussion.

Mr. McCUTCHEON. I understand, Mr. Chairman. I do not want to consume time in useless discussion.

The CHAIRMAN. I only suggest that to you.

Mr. McCUTCHEON. Replying to your question, in April, 1908, a committee known as the committee on water supply was appointed by the board of supervisors of San Francisco. The purpose of the appointment of that committee was to consider the water question generally and the relations existing between the water company and the city.

The CHAIRMAN. Excuse me for interrupting you once more. There are two questions that I would like to get information on: First, as to whether there has been an offer on the part of the city or the city authorities to buy out your company, and whether you have made an offer; whether there has been a proposition on one side, or an offer; and in the next place, I would like to hear the question discussed as to whether there are any other sources of water supply accessible to the city of San Francisco.

Senator FULTON. I think that is all any of us really want.

Senator GAMBLE. The proposition I want to know about is, Is there any other source of water supply for the city of San Francisco? If there is any other water supply, it seems to me that is one question, and it is for us to consider here, as representing the Government in the national park, will we permit this city to invade the national park if a good and sufficient supply can be secured outside? If it

can not be supplied, why then this discussion would be pertinent. Otherwise it seems to me, however interesting—

Senator FULTON. It seems to me the suggestion of the chairman confines the discussion to the proper issue.

The CHAIRMAN. I do this simply to abbreviate matters and not that I want to cut you off in your discussion.

Mr. McCUTCHEON. I appreciate that. I am glad to be interrupted. I do not want to take up your time on matters that you do not consider germane. May I for a moment, however, answer your question with reference to your suggestion as to the offers which have been made?

The CHAIRMAN. Yes; I should like to hear something on that point—recent efforts which may have been made to secure the property of the company.

Mr. McCUTCHEON. In April, 1908, the board of supervisors appointed a committee known as the committee on water supply, consisting of nine of its members. The committee invited the officers of the company before them, and in the course of the discussion requested them to state in writing, first, the price at which the company would sell its property to the city; secondly, the basis upon which, in the opinion of the officers of the company, rates should be enacted.

In response to that, the president of the company, under date of April 13, addressed a letter to the committee on water supply, in which he said:

As has heretofore been stated, the directors will recommend to the stockholders the sale of the property to the city for the face value of the issued bonds and the outstanding stock, approximating \$32,000,000; or, if the city does not desire the Lake Merced property to be included in the sale, there may be a deduction of \$4,000,000 from the price named, with the privilege to the city of using this Lake Merced property for purposes of a water supply only, for such time as this may be desirable, not exceeding ten years, on payment to the company of a net return of 4 per cent per annum on this \$4,000,000.

The CHAIRMAN. That involved paying the par value not only of the bonds but of the stock, didn't it?

Mr. McCUTCHEON. Not the par value of the stock, but \$50 a share for shares the par value of which was \$100. In other words, this was half the par value, or 50 per cent of the par value of the stock.

Senator SMOOT. Thirty-two million dollars?

Senator DIXON. The face value of the bonds?

The CHAIRMAN. Seventeen and a half million dollars in bonds and \$14,000,000 in stock at par?

Mr. McCUTCHEON. Yes.

Senator NEWLANDS. About \$32,000,000 in all?

The CHAIRMAN. Yes. What reply did the city make to that?

Mr. McCUTCHEON. I will come to that. The letter of the president of the company continued:

These are positively the lowest terms at which the directors will recommend to the stockholders the sale of the property, and if it is to be purchased by the city it may as well be taken for granted, once and for all, that these are the best terms on which it can be obtained. I have repeatedly stated to you that the directors and stockholders firmly believe that this price is far below the actual value of the property, but considerations which have been stated and made plain to you have induced a willingness on their part to dispose of the property on these terms. The city does not permanently need Lake Merced as a source of water supply, and could not well use it for anything else than a public park. The land has a speculative value, which

would be an inducement to the stockholders to retain it and thus in a measure compensate themselves for what they feel is a lower price than their property should command.

Senator NEWLANDS. Lake Merced consists of a ranch within the boundaries of the city of San Francisco and which has a lake in it?

Mr. McCUTCHEON. Yes; a ranch of 2,800 acres.

The CHAIRMAN. Deducting \$4,000,000 for the ranch would leave \$28,000,000.

Senator SMOOT. They have the right to deduct it or not, as they please.

Mr. McCUTCHEON. That was optional with the city.

The CHAIRMAN. What reply did the city make to that or anybody for the city?

Mr. McCUTCHEON. The chairman of the committee informed the president of the company that this offer, simply emanating from the directors, was not in a form that was binding upon the corporation, and suggested to him that it ought to be presented to and acted upon by the stockholders, and here is the reply of the president to that proposition:

SAN FRANCISCO, CAL., May 14, 1908.

HON. W. S. JOHNSTON,

*Chairman of the Special Committee of the
Board of Supervisors on Water Supply.*

DEAR SIR: At the conference had at your request in the office of the city attorney on Saturday, May 9, you stated that the supervisors felt that the offer of the Spring Valley Water Company for a sale of its property to the city, made first through the federated committee and later repeated in my letter of April 13 to your committee, was not in a sufficiently valid and binding form to enable the supervisors to act upon it.

You suggested, further, that it was necessary, before the supervisors could take action, that there should be some confirmation of this proposal made by the directors of the company emanating from its stockholders.

The offer made through the federated committee was reported to the stockholders at the annual meeting of the company in January, and this report, in a printed statement, has been sent to all of the stockholders, and the proposal made in my letter to your committee of April 13 has also received the widest publicity; and thus far there has been no dissent from the stockholders as to this proposition for a sale.

The only thing further that could be done by the stockholders would be the formal ratification of the offer of the president at a meeting called for that purpose. This action could hardly be expected in advance of some step by your committee indicating that it favors the acquisition of the property on the terms named.

If the stockholders were called together to consider this matter, they would undoubtedly ask the officers whether or not any suggestion or intimation had been made by your committee of a willingness to recommend the purchase of the property by the city on the terms named. We would be compelled to inform them that no suggestion or intimation had been made, and we think it highly improbable that any further action whatever would be taken by them in the absence of some such evidence of a serious purpose on the part of the city to carry out the plan of purchase.

While the offer made to you in my letter of April 13 has never been formally authorized by the stockholders, nevertheless I have evidence, which is entirely satisfactory to myself, that the stockholders will formally ratify that offer as soon as they shall have some evidence of a desire on the part of the city to acquire the plant on those terms, or some other consideration which would justify them in ratifying a formal contract made by the directors giving an option on the property for a specified time.

The offer made for a sale was made in good faith, has been practically assented to by the stockholders, and undoubtedly will be carried out on their part, should the city show a disposition to meet them with similar evidence of its own good faith.

Your committee has had this matter under advisement for a long time. It has probably formed an opinion as to the desirability or undesirability of acquiring the property on the terms proposed. We think it is not unreasonable to ask that you give us some evidence of your attitude toward the proposition before we call upon the stockholders to take formal action.

I have heretofore said to you, and I can not too strongly repeat it, that the stockholders consider the price named far below the actual value of the property.

That letter was sent on the 14th of May.

Senator GAMBLE. Of what year?

Mr. McCUTCHEON. 1908. The first letter was sent on the 13th of April, 1908. I have told you of the offer from the Federated Water Company, a committee made up from the commercial bodies of San Francisco, of which Mr. Phelan was a member.

Senator NEWLANDS. Did they recommend \$32,000,000?

Mr. McCUTCHEON. They recommended \$31,500,000. I think, in justice to Mr. Phelan, at least, it ought to be said that he did not join in that report. At any rate, there was no written dissent. At the head of that committee was Col. W. R. Hewer, a member of the Engineer Corps of the United States Army, than whom no engineer stands higher for integrity and ability.

The CHAIRMAN. Have they taken any further action?

Mr. McCUTCHEON. I am coming to that in a moment. Now, with that letter of the 13th of April and this letter of the 14th of May pending before the board of supervisors, they, on the 21st of June, 1908 (and I speak from the record), without having made any response to either of those letters, passed this resolution. This is a formal resolution passed by the board of supervisors:

Be it ordained by the people of the city and county of San Francisco as follows:

SECTION 1. It is hereby determined and declared that the public interest and necessity demand the acquisition, construction, and completion of a public utility, to wit: A water supply and works to be owned and controlled by the city and county of San Francisco to furnish to said city and county and to the inhabitants thereof a sufficient supply of good, pure water for all purposes.

SEC. 2. The board of public works is hereby directed to procure, through the city engineer, and to place on file with the board of supervisors, plans and estimates of the cost of original construction and completion by the said city and county of the public utility herein named.

SEC. 3. Lake Eleanor, the Hetch Hetchy Valley, and the waters of the Tuolumne River, in Tuolumne County, Cal., are hereby designated as available sources for obtaining a sufficient supply of good, pure water for the city and county of San Francisco and the inhabitants thereof.

An amendment was offered to that ordinance to include the Spring Valley property, but it was defeated.

The CHAIRMAN. Has there been no other response to those letters you read?

Mr. McCUTCHEON. Following that, after they had made this formal declaration that the city needed a water supply, and that Hetch Hetchy and Lake Eleanor were the available supplies which the city did want, they sent a formal resolution to the company, asking it to name a price. By the way, when they came to fix rates for 1908 they fixed a valuation upon our property of \$25,000,000. The company did not propose to accept any such valuation as that, so it went into the circuit court with another bill in equity for an injunction to enjoin the 1908 rate schedule, and Judge Farrington, the district judge from Nevada, was called over to San Francisco to hear that application. The hearing consumed some two weeks, and after consideration, and filing an exhaustive opinion, the court found that the property was of greater value than the price named by the city; that the rates enacted were confiscatory, and issued a preliminary injunction to restrain their enforcement.

Now, after they had passed that rate schedule to print, the company having informed them in advance that if they did not allow higher

rates it would again be forced to go into the courts, withdrew this offer of the 13th of April, 1908, by a formal letter.

Now, it has been said that the president of the company at that time, who has been described by Mr. Phelan as a man of a very high order of intellect, was deposed from the presidency, and that when he was deposed this offer was withdrawn. The offer was withdrawn in a letter addressed by that same gentleman to the board of supervisors on the 22d of June, just following the passage to print of the rate ordinance based upon a valuation of \$25,000,000. He said, referring to his letter:

No response has been made to my letter. You have fixed rates on a basis of valuation very much below the figure named, and have resolved in favor of the acquisition of another water supply. The offer made to recommend to the stockholders a sale on the terms stated is therefore hereby withdrawn.

Senator NEWLANDS. Which president was that signed by?

Mr. McCUTCHEON. Captain Payson.

Senator NEWLANDS. The new or the old president?

Mr. McCUTCHEON. The old president.

Senator FULTON. Did the court make any finding touching the value of this property?

Mr. McCUTCHEON. The court found that the property in use was worth at least \$27,000,000, and that according to the showing of the city there was \$4,000,000 worth of property belonging to the company and not in use.

Senator FULTON. That should be added to the \$27,000,000.

Mr. McCUTCHEON. That should be added to the \$27,000,000.

Senator FULTON. Approximately \$31,500,000.

Senator FLINT. The same piece of property you mentioned a minute ago?

Mr. McCUTCHEON. No, not that; that is in use. And by the way, as to that piece of property the city's experts testified that it was worth something like \$2,700,000, and we produced a real estate expert of very high standing, Mr. Baldwin, who is well known to Senator Newlands, who said that for real estate purposes its minimum value was \$4,000,000. Now, following that, mind you, after they had put the value down to \$25,000,000—

Senator FULTON. Right there, is that property you speak of, which he said for real estate purposes was worth \$4,000,000, is that in use as a part of the plant?

Mr. McCUTCHEON. Yes; in use as a part of the plant.

Senator FULTON. The earnings have to cover its value in order to make a return on the investment?

Mr. McCUTCHEON. Yes; unquestionably.

Senator FULTON. I did not know but it was some real estate outside.

Mr. PHELAN. It is capable of producing 3,000,000 gallons of inferior water per day and is in the city limits.

Mr. McCUTCHEON. If these gentlemen will allow it, we will be very glad to take it out and deduct \$4,000,000 for it.

The CHAIRMAN. I think you have covered this branch of the case. Now, go to the main question, which I think—

Mr. McCUTCHEON. There was one thing that you asked me, whether the city had made any response. After they had passed a resolution declaring in favor of Hetch Hetchy they called upon us to name a price on our property. The company replied, "You have forced us

into litigation. You have done that which in advance we told you if you did it would force us into litigation. You have educated the public mind to believe that this property is not worth more than \$25,000,000. You have gotten the public mind into such a state that it will probably not, and you can not conscientiously advise it, to pay a price for this property which the stockholders will be willing to accept, and therefore we think no good could come from naming you a price now."

Now, they say that under the provision of the charter they were first required to declare that they intended to go to Hetch Hetchy for a water supply before they could ask us to name a price. I deny that the charter is capable of any such silly construction as that. They did not have to declare that they intended to acquire Hetch Hetchy in order to buy the Spring Valley. They could not go to Hetch Hetchy, according to the charter, until they had sought to buy Spring Valley; but they were not compelled to declare that they intended to go to Hetch Hetchy in order to buy Spring Valley. That is so silly upon its face as hardly to require a statement to show its lack of foundation. But that is the course they pursued. Now we come to the next point.

Senator NEWLANDS. In this suit you have pending, what does Spring Valley contend is the value of her property?

Mr. McCUTCHEON. The bill alleges that the property in use is worth \$45,000,000. In support of that the company has presented the testimony of Mr. Rudolph Herring, an engineer of as high standing as any man in the United States, and probably as high as anybody in the world; the testimony of Mr. Sterns, of Boston, who is now a member of the Panama Canal Commission; the testimony of Mr. Schuyler, also a member of that commission, and the testimony of other engineers.

Of course, it will be said it is easy to obtain expert testimony. At the same time that is the way that the value of such property as this is established.

Senator SMOOT. On what basis did he value it? That is, upon what it would cost San Francisco to develop a water supply, or upon the basis of what it actually would cost the company if it had no right of way, lands, and so forth?

Mr. McCUTCHEON. There were a number of theories adopted for the valuation. One expert adopted several theories, and the result of his valuation was that the property was worth between \$40,000,000 and \$45,000,000. Let me suggest, while we are on the subject of valuation, that in one of the valuations placed by Mr. Grunsky, city engineer, upon this property he included an item of \$3,900,000 for the value of franchises and established business. The board of supervisors, when it came to fix the rates at the rate-fixing period following that valuation, excluded those two items entirely, and we never have been allowed anything for franchise or established business. Those of you gentlemen who have had occasion to examine questions of this kind know that Judge Brewer, in the Kansas City case, determined that the element or item of established business was one to be taken into consideration in ascertaining the value of a property of this kind; but although the city engineer had placed a valuation upon that item, the supervisors when they came to consider the question struck that out and refused to give it any consideration.

Senator DIXON. Did Mr. Grunsky make an estimate of the interest cost during construction, in arriving at his figures, or not?

Mr. McCUTCHEON. No; I think not. I think he omitted anything of that kind. It is my impression that he did not, although he may have done so. I can not state positively.

Senator NEWLANDS. What valuation did Mr. Grunsky put upon it?

Mr. McCUTCHEON. His valuation aggregated \$28,000,000 in 1901 or 1902, including \$3,900,000 for franchises and good will.

Senator NEWLANDS. Including this Merced property?

Mr. McCUTCHEON. Yes.

Senator SMOOT. Was he city engineer at that time?

Mr. McCUTCHEON. He was city engineer at that time; yes. Now, there are two questions upon which you want to be advised: First, whether San Francisco is now in dire need of more water; secondly, whether there are other sources of supply to which she may go.

Senator FULTON. I think the last one is more important.

The CHAIRMAN. The last one is the main one. I do not think the other cuts much of a figure.

Senator FULTON. They do not claim she is in dire need.

Senator SMOOT. Perhaps it would be better for us to take a recess now and come back and give Mr. McCutcheon time to present that question after the recess.

The CHAIRMAN. He had better go on and finish if he can.

Mr. McCUTCHEON. It has been suggested that San Francisco is practically wholly dependent—

Senator FLINT. Nobody contends that now.

The CHAIRMAN. There is no need of discussing that. I believe it is conceded, even by the city, that there is a supply of water there for a number of years to come.

Senator FLINT. How many years? It is not material—

Senator SMOOT. I thought it was material, because he said the daily consumption—

Senator FLINT. I did not think anybody wanted to hear that.

Senator FULTON. I understood him to say they could develop a daily additional capacity of 10,000,000—

Mr. McCUTCHEON. I will undertake to show you more than 100,000,000.

Mr. PHELAN. We do not concede that.

Mr. McCUTCHEON. Then we will go ahead with that. The city engineer of San Francisco at the time this scheme was conceived (I do not use the word "scheme" in any disagreeable or unfriendly sense) was C. E. Grunsky. Mr. Grunsky was the man who made the first report and the only report, I think, I shall be able to show you, upon the so-called "Hetch Hetchy" system.

Senator FULTON. Is he still city engineer?

Mr. McCUTCHEON. No, sir.

Senator FULTON. When did he cease to be?

Mr. McCUTCHEON. Five or six years ago.

Senator SMOOT. He was appointed an engineer on the Panama Canal.

Senator NEWLANDS. And afterwards in the Reclamation Service.

Senator SMOOT. And he is now an engineer in New York.

Mr. McCUTCHEON. Mr. Grunsky wrote a paper long after he ceased to be city engineer, which was read before the technical society of the

Pacific coast last year. That paper has been published. In it he deals at great length with the Spring Valley property and the possibility of expanding that property. The present consumption of San Francisco is 32,000,000 gallons per day. The present delivery to San Francisco is 36,000,000 per day. In other words, the delivery now is 4,000,000 gallons in excess of the consumption.

The CHAIRMAN. What is the present capacity?

Mr. McCUTCHEON. Thirty-six million gallons. What I mean by that, Mr. Chairman, is that the pipe capacity leading from the storage reservoirs of the company to the distributing reservoirs in the city is 36,000,000 gallons. I do not mean by that that the water development is limited to 36,000,000 gallons. We have in our storage reservoirs to-day (I think I am within the mark, but I stand to be corrected upon the subject by Mr. Schussler if I go too far)—I think we have in our storage reservoirs to-day sufficient water to supply San Francisco for more than 1,000 days, even if there should be no rainfall for that length of time. Am I correct?

Mr. SCHUSSLER. Correct.

Mr. McCUTCHEON. So I do not want the members of the committee to get the notion that 36,000,000 gallons is the limit of development of the company. Thirty-six million gallons is all we can send through our pipe lines leading from our storage reservoirs to the distributing reservoirs within the city limits. By an expenditure of not exceeding \$500,000 we can increase that pipe delivery to 40,000,000 gallons per day. That 40,000,000 gallons does not represent the extent to which water can be developed upon the property of the company. I said to you a moment ago, and I say it again, that the development can be made to exceed 100,000,000 gallons per day.

The CHAIRMAN. On your present property?

Mr. McCUTCHEON. On our present property.

The CHAIRMAN. Of good, wholesome, pure water?

Mr. McCUTCHEON. I will read you, if I have the time, a statement from the chairman of the hospital committee of the board of supervisors of San Francisco, in which he says that the city of San Francisco is to be congratulated upon the purity of the water which is supplied to the city and its inhabitants by the company.

Senator NEWLANDS. Is there any contention at all about the purity of that water?

Mr. McCUTCHEON. I do not know, Senator. When we were before the House committee, the representatives of San Francisco seemed to think that the exigencies of their case demanded that they should slur the quality of the water.

Senator NEWLANDS. My observation of it is that it is better water than that of any city that I know of, much better than that of Washington.

Mr. McCUTCHEON. When the law officer of the city came on, and that was stated, he arose in his place and said, "I desire to say to the committee, as the representative of San Francisco, that this water is of good quality." As I say, if I have the time, and if it is deemed necessary, I will read you an extract from a report made by the chairman of the hospital committee of the board of supervisors of San Francisco with reference to the quality of this water.

Mr. PHELAN. There is an explanation which I will make to the committee in my time.

Mr. McCUTCHEON. I go further and I say there is no city of the size of San Francisco in the world that is so favorably situated for its water supply as is San Francisco.

The CHAIRMAN. Suppose we take that point for the time being for granted. Now the next point is, assuming that San Francisco wants to establish a water system of its own, where can she secure such a water supply outside of going to this Hetch Hetchy Valley?

Mr. McCUTCHEON. Shall I take that up now?

The CHAIRMAN. I should like to hear that discussed.

Senator SMOOT. Was there ever any dispute as to the report made by Mr. C. E. Grunsky, former city engineer, that it was possible for your company to develop 109,000,000 gallons per day?

Mr. McCUTCHEON. Yes; that has been antagonized.

Senator SMOOT. There is no question but what he made that report. I have seen the report.

Senator FULTON. And Colonel Hewer made the same.

Mr. McCUTCHEON. Colonel Hewer said at least 100,000,000 gallons. Colonel Hewer made that statement at a banquet of the Merchants' Association of San Francisco, which is one of the most important commercial bodies of the town, the banquet being given for the express purpose of discussing the water situation.

Senator HEBURN. What time in the morning?

Mr. McCUTCHEON. Before the champagne hour, Senator.

Mr. PHELAN. That was not an investigation in the field, but an academic report from other data.

Mr. McCUTCHEON. What is the authority for that statement, that Colonel Hewer did not investigate it in the field?

Mr. PHELAN. His own authority. I went with him, and I know he had no personal knowledge of any except the peninsular supply.

Mr. McCUTCHEON. Do you make the statement that he did not go to the properties of the Spring Valley Water Company before he made that statement?

Mr. PHELAN. When he sat with the federated water committees he said he had not investigated the supplies in the field, and you know the date of that. That was a report to the board of supervisors. What he said at a banquet, or what he did subsequent to making that report, in the way of investigation, I do not know.

Mr. McCUTCHEON. Exactly; you do not know.

Senator SMOOT. Do you disagree with the report of Mr. Grunsky, in which he says that there could be a yield of 109,000,000 gallons per day?

Mr. PHELAN. Mr. Grunsky qualifies his statement in the testimony before the House committee. If Mr. McCutcheon will allow, I should like to submit that.

Mr. McCUTCHEON. Certainly, if the committee will give me time.

Senator FLINT. Why don't you let Mr. McCutcheon finish, and then you can go on?

The CHAIRMAN. Mr. McCutcheon, I should like to hear you on this point. I am speaking for myself personally. Laying aside your company and all that pertains to it, assuming that San Francisco is here now seeking to get a water supply for establishing an independent system of its own for supplying the city with water, where could that city get water easily without going to Hetch Hetchy? Are there

other sources outside of the property controlled by you where they could readily get this supply?

Mr. McCUTCHEON. At a number of places in the Sierra Nevada Mountains.

Senator GAMBLE. As accessible as Hetch Hetchy?

Mr. McCUTCHEON. I think so, sir. Of course, that involves some engineering knowledge. I do not know how many of you gentlemen are familiar with the westerly slope of the Sierra Nevada Mountains; but there are a number of streams that flow down the westerly slope of those mountains, those northerly of San Francisco emptying into the Sacramento River, and those southerly of San Francisco, but northerly of what is known as the Tehachapi Pass, emptying into the San Joaquin River.

The CHAIRMAN. Will you please point out on the map where the Coast Range is and where the other range is?

Mr. McCUTCHEON. I have not brushed up my geography for a long time, and will let Mr. Schussler do that.

Senator NEWLANDS. Haven't you got a map showing the rivers alone?

Mr. McCUTCHEON. There is a topographic chart which shows that.

STATEMENT OF H. SCHUSSLER, ESQ.

Mr. SCHUSSLER. Here is a map on a larger scale, showing the peninsula of San Francisco and showing the watershed on the east side.

Senator NEWLANDS. Have you got any general map showing the northern part of the State?

Mr. SCHUSSLER. No. Here is the location of the San Francisco peninsula and the Coast Range. The Tuolumne River watershed is located here where I hold my pencil. The Yosemite Reservation is marked in purple. Next to that on the north lies the Stanislaus watershed.

Senator FULTON. Is there any water there outside of the park which could be utilized?

Mr. MANSON. Yes; but the whole of the reservoirs are owned by the Standard Electric Company or its successors and used for electric power.

Senator FULTON. That would not interfere with the use of the water for domestic purposes.

Mr. MANSON. I think they could charge us for it.

Senator FULTON. Could the city, without interfering with their use of the water for power, take the water for domestic purposes below where they use it?

Mr. MANSON. I think not; they would charge us heavily for it.

Senator FULTON. I am asking the engineer of the company.

Mr. SCHUSSLER. The last tailrace of the Standard Electric Company is at an elevation of about 700 feet above tide.

Senator FLINT. Where is that point?

Mr. SCHUSSLER. On the Stanislaus River.

Senator NEWLANDS. The Stanislaus is north of the Tuolumne River?

Mr. SCHUSSLER. Yes.

Senator NEWLANDS. And the Hetch Hetchy Valley is on the Tuolumne?

Mr. SCHUSSLER. Yes.

The CHAIRMAN. Could not the city get a water supply out of those two streams, the Tuolumne and the Merced, west of and outside of this reservation?

Mr. SCHUSSLER. Any development of the water from the Sierra Nevada requires reservoir storage, no matter to which stream you go. You would have to build reservoir sites on the Tuolumne reservation in order to have a constant supply.

Senator FULTON. What we want to know is the places for reservoir sites.

Mr. SCHUSSLER. On the Tuolumne?

Senator FULTON. Within the region suggested by the Chairman's question.

Mr. SCHUSSLER. On the Stanislaus, yes.

The CHAIRMAN. On the Tuolumne?

Mr. SCHUSSLER. Not below the Hetch Hetchy, not very good. The canyon is too steep.

The CHAIRMAN. On the Merced?

Mr. SCHUSSLER. On the Merced there are some reservoir sites, but they are utilized for irrigation purposes. On the Stanislaus there are very good reservoir sites. They were investigated by me for the United Railroads of San Francisco. They have some very good reservoir sites where water can be developed by storage.

Senator FULTON. How much?

Mr. SCHUSSLER. Approximately 300 cubic feet per second.

Senator FULTON. I should like to know the gallons per day.

Senator SMOOT. Three hundred cubic feet a second?

Mr. SCHUSSLER. That is a little less than 200,000,000 gallons per day, approximately.

Senator NEWLANDS. Would there be reservoir capacity sufficient for that?

Mr. SCHUSSLER. Yes; I reported that they could approximately produce a constant stream, that is, a natural flow, the low-water flow or summer flow, with the water liberated from the proposed reservoirs, which would give them about 300 cubic feet per second, or somewhere between 150,000,000 and 200,000,000 gallons a day. That would be utilized for electric power, and the final discharge would be about 700 feet above tide. Now, the city, in the proposed use of the Tuolumne water, contemplate, after they get through with it at their last power house tailrace, sending it by about 75 miles of pipe across the San Joaquin Valley to the west side, where it arrives at about 180 feet elevation above tide, and there they propose to pump it 625 feet or thereabouts over the Livermore Pass. Then it will flow to San Francisco. The same plan could be followed with the tailrace water from the Stanislaus.

The CHAIRMAN. Then a reservoir could be made at Lake Eleanor, couldn't it, on a tributary of the Tuolumne?

Mr. SCHUSSLER. Yes; Lake Eleanor would be a very fine supply.

Senator SMOOT. That would not interfere with the Hetch Hetchy?

Mr. SCHUSSLER. No.

Senator DIXON. How about the watershed? Is it in the forest reserve?

Mr. SCHUSSLER. It is in the Yosemite Park.

The CHAIRMAN. It is in the Yosemite Park, to the northwest of Hetch Hetchy?

Mr. SCHUSSLER. Yes.

The CHAIRMAN. Tributary to the Tuolumne?

Mr. SCHUSSLER. Yes.

The CHAIRMAN. But as I understand it, from the reports I have read, about 50,000,000 gallons could be secured from that reservoir?

Mr. SCHUSSLER. Yes. That amount, together with other water got from other sources to the northwest, would certainly give the city a very large supply.

The CHAIRMAN. That of itself would give the city more than it uses to-day and more than it has to-day?

Mr. SCHUSSLER. Yes.

The CHAIRMAN. How about the Stanislaus?

Mr. SCHUSSLER. When I examined the upper Stanislaus, in 1908, it was practically uninhabited. It is very much like the upper portion of the Yosemite Valley.

Senator HEYBURN. Is Hetch Hetchy a gravity proposition?

Mr. SCHUSSLER. No, sir; they propose to drop the water something like 1,200 feet to create power for the purpose of pumping the water up again on the other side.

Senator HEYBURN. That is the Hetch Hetchy?

Mr. SCHUSSLER. Yes; and then send it to San Francisco from the summit of the divide between the San Joaquin Valley and Livermore Valley. They have to lift it to a summit elevation of about 740 feet above tide, and from there it will run by gravitation into San Francisco, arriving there at about 200 feet elevation.

Senator HEYBURN. So that the Hetch Hetchy proposition would necessitate pumping the water?

Mr. SCHUSSLER. Oh, yes.

Senator HEYBURN. It is not a gravity proposition?

Mr. SCHUSSLER. No; gravity and pumping combined.

Senator NEWLANDS. How high?

Mr. SCHUSSLER. About 625 feet, including the friction in the force pipes.

Senator NEWLANDS. Does the Spring Valley, from any of its sources of supply, have to pump?

Mr. SCHUSSLER. Yes; we pump a portion of it.

Senator NEWLANDS. To what height?

Mr. SCHUSSLER. We pump the water from Alameda Creek nearly 300 feet.

Senator HEYBURN. What portion of the water supply is that?

Mr. SCHUSSLER. That is a little less than half. Then in San Francisco, in order to supply the high levels we have local pumping stations. The business portion of San Francisco is all supplied principally by gravitation from a city reservoir.

Senator SMOOT. If the city went to the Stanislaus River, would they have to pump that water?

Mr. SCHUSSLER. Oh, yes.

Senator SMOOT. What is the comparative distance, between the Stanislaus River and the Hetch Hetchy, to San Francisco?

Mr. SCHUSSLER. I think it is practically the same. If they could make an arrangement with the power company to take their tailrace water below, then the distance would be very much shorter, because

the electric-power companies have already constructed big channels, ditches, and flumes, to bring the water to their power stations, to a point in the foothills near the San Joaquin Valley.

Senator FULTON. Is that a supply of pure water?

Mr. SCHUSSLER. Yes. It is taken from the headwaters, from the snow region, which is very pure.

Senator FULTON. There is no manufacturing, and there are no towns to injure the water?

Mr. SCHUSSLER. Not at the headwaters; no, sir.

Senator SMOOT. And you think 200,000,000 gallons could be developed there?

Mr. SCHUSSLER. I think from 150,000,000 to 200,000,000 gallons you could get from there, and probably could get 50,000,000 gallons from Lake Eleanor, which would make altogether, anyway, 200,000,000 gallons a day.

Mr. PHELAN. Is not that under private ownership?

Mr. SCHUSSLER. The power proposition is, but I qualified my statement with this remark, that an arrangement should be made with the power company that has developed the power, and that is now proposing to construct these large reservoirs for the sale of its tailrace water.

Senator FULTON. If they could not agree, they could condemn it?

Mr. SCHUSSLER. Yes; but Spring Valley has enough water under the present ownership to supply the city for nearly a hundred years.

Mr. PHELAN. The Stanislaus is privately owned.

Mr. SCHUSSLER. The power proposition is.

Senator HEYBURN. On what theory do you say you would have to pay for the use of the water below the power houses?

Mr. SCHUSSLER. It would be at the point of discharge at the tailrace in the foothills, which is right near the easterly margin of the San Joaquin Valley, at an elevation of about 700 feet.

Senator HEYBURN. You do not understand my question. My question is, Upon what theory would they be entitled to charge for the water after they have used it?

Mr. SCHUSSLER. It will be water that is produced and gathered in their watershed, and in their proposed reservoirs.

Mr. PHELAN. Storm water.

Mr. SCHUSSLER. If a man owns a piece of property on a stream, which is properly located to form a fine reservoir, if he settles with the water-right owners below, so that there is no interference on their part, I think he is then entitled to build a reservoir on his land, and the decisions of the courts are such that he is really the owner of the water in that reservoir. Then when he liberates this water, and thus equalizes the supply of the river below, through the summer, through the low-water season, I think the decisions have been that that is his water.

Senator DIXON. The excess water.

Mr. SCHUSSLER. Yes; that is a legal question, though.

Senator DIXON. I think he is wrong on his law.

Senator HEYBURN. He is entitled only to the use of the water.

Mr. SCHUSSLER. I may be mistaken, then; I meant the excess water, though.

Senator DIXON. He is entitled to divert lower down the excess water that he turns in, over the natural water.

Senator NEWLANDS. I presume the contention is that a man who owns a reservoir can regulate the flow of the water?

Mr. SCHUSSLER. Exactly.

Senator NEWLANDS. And that it is highly important to the city that it should have a regular flow of water. It may, therefore, be compelled to pay the owner of the reservoir for the privilege of regulating the flow of water.

Senator FULTON. Still those are not matters that are material here.

Senator SMOOT. That is only using the reservoir as a part of the water plant.

Mr. SCHUSSLER. That will be a subject of negotiation.

Senator FULTON. The question is, What other sources of water supply are available? It makes no difference whether they are in private use or not, if they are in such use that the city could condemn them.

The CHAIRMAN. Are there any places on the Merced River west of the Yosemite Valley, between the park and San Francisco?

Mr. SCHUSSLER. For reservoir purposes, not very good ones for a municipal supply. Those reservoirs are in the lower foothills. They are subject to great heat and evaporation, while the Yosemite Valley naturally would form a magnificent reservoir.

Senator FLINT. As a matter of fact, would not every complaint that has been made with reference to the watershed of the Tuolumne be equally true of the watershed of the Yosemite? In other words, if the Merced River was used, would it not mean, according to the arguments made by those who say that the mountain reserves ought to be saved for scenic beauties, that it would prohibit anyone ever going into the Yosemite Valley, because the drainage would be so heavy into the Merced River?

Mr. SCHUSSLER. I don't think you could use the water from the Merced River for municipal purposes, unless you filter it after it has passed out and through the Yosemite Valley.

Senator SMOOT. What about Lake Tahoe?

Mr. SCHUSSLER. Lake Tahoe has a watershed, including the lake, of about 400 square miles. That is appropriated for irrigation and power purposes.

Senator SMOOT. Then the Yuba River?

Mr. SCHUSSLER. I am quite familiar with a portion of the Yuba River.

Senator NEWLANDS. The outlet of Lake Tahoe is into Nevada.

Mr. SCHUSSLER. There is considerable water to be developed on the Yuba River.

Senator NEWLANDS. That is a longer distance, isn't it?

Mr. SCHUSSLER. That is about 30 or 40 miles farther.

Senator SMOOT. How about the Feather River?

Mr. SCHUSSLER. The Feather River is farther. The Feather River is also a stream that runs off the Sierra Nevada, but I am not familiar with the fact whether there are any large reservoir sites on it.

Senator FULTON. How large a supply is there out of the Yuba River?

Mr. SCHUSSLER. I have made some approximate estimates. The estimates run between 100,000,000 and 150,000,000 gallons a day, which could be developed there.

Senator SMOOT. Are there reservoir sites?

Mr. SCHUSSLER. Very good reservoir sites. There are a number of them. It is simply a question of building the dams higher.

Senator SMOOT. Would it cost more for developing those than Hetch Hetchy?

Mr. SCHUSSLER. It might if you get the Hetch Hetchy Valley given to you gratis, and if you did not have to pay anything for the value of the power or for the privilege or for the private riparian rights on the Tuolumne. The value of the electric power on the proposed Hetch Hetchy system is enormous.

Mr. McCUTCHEON. Who gets that? Under this bill the city can not get it. The city is prevented from using any of that power except for its municipal purposes.

Mr. SCHUSSLER. It is a very easy matter to develop a great amount of power.

Mr. McCUTCHEON. Suppose the city goes to the expense of building this reservoir, and there becomes a constant flow——

Mr. SCHUSSLER. If the city does not get it, then the Government, I suppose, will get it.

Senator HEYBURN. What do you know about Clear Lake, which is much nearer to San Francisco?

Mr. SCHUSSLER. I do not think the quality of the water is very good. That has been thoroughly investigated. There seem to be a number of springs in the lake and around the lake. The fact is that for the last forty years I have investigated practically all these sources, but when I found that all the water needed for the next hundred years could be developed in the valleys right around the bay, where all you have to do is to buy the land, or the bulk of it, to protect the reservoirs from pollution—as far as our company was concerned, I advised them not to touch any of the mountain streams.

Senator FULTON. How about Feather River?

Mr. SCHUSSLER. I do not know much about that.

Senator SMOOT. What could be developed?

Mr. SCHUSSLER. I don't know. The Feather River I don't think has very good reservoir sites.

Senator FULTON. The American River?

Mr. SCHUSSLER. That is also in a deep canyon, and the reservoir sites above are rather poor. The water would have to be diverted and stored.

Senator FULTON. Is it a practical proposition?

Mr. SCHUSSLER. Oh, I think it could be done.

Senator DIXON. They are mining streams, are they not?

Mr. SCHUSSLER. You would have to get the water above the mining.

Senator DIXON. How long can you hold water in reservoirs and still call it pure water?

Mr. SCHUSSLER. It improves the longer you keep it. We have had a great deal of experience with this business. I have had charge of it for forty-four years, and we have found it was necessary, owing to the great variability of the climate and the rainfall, a good rainy season being sometimes followed by one or even two very dry and unproductive rainy seasons; we have been compelled to establish the rule that we must have a thousand days' water if possible always ahead to provide for a thousand consecutive days without productive rain.

Senator DIXON. Practically three years.

Mr. SCHUSSLER. Yes; two and a half to three years. That view has also been confirmed by Colonel Mendell, one of the best experts

(without any reference to our friends present here), one of the best experts who ever investigated the subject.

Senator FULTON. How much of a supply could you get from the American River? You say it is a practicable proposition.

Mr. SCHUSSLER. That I could not tell you, but there is no doubt you could develop water if you had the storage. You might develop water to the amount of 100,000,000 gallons a day or more; but the question would be whether it would be of as good a quality as are most of the other streams; because on the American River your principal storage propositions are so low down in the foothills that you would have to go to great expense for a big aqueduct to catch the water up above the level where the dirty water commences.

Senator SMOOT. Is the Sacramento River feasible?

Mr. SCHUSSLER. Yes, but it would be very expensive. You would have to go a long way. But there is one source probably as good as any, except that the quality has been doubted, and that is the San Joaquin River. Now, the San Joaquin River lies right to the west of part of our headwaters on the Alameda Creek system. I discouraged our directors years ago not to make any investment whatsoever in the Sierra Nevada, because it was too expensive, and because we could get all the water for many decades nearer home; but I have said to them "If ever you want to increase your water supply over and above the capacity that we can develop the works, which with the coast streams on the Pacific coast is somewhere in the neighborhood of 135,000,000 gallons a day—

Senator SMOOT. That is the San Joaquin?

Senator FULTON. No; he says what they could develop from what they have.

Mr. SCHUSSLER. I have told them that if they wanted to go far beyond that, then they could go to the San Joaquin River, across the range, not far from our easterly boundary, and do just the same that the city proposes to do—pump the water over Livermore Pass and run it onto the company's filter bed that we have—1,300 acres of deep gravel beds where we now filter our water.

Senator SMOOT. Out of the San Joaquin how much could you develop?

Mr. SCHUSSLER. One hundred and fifty million to 200,000,000 gallons a day.

Senator NEWLANDS. Would that be less expensive?

Mr. SCHUSSLER. Very much less; but nobody could handle that comfortably unless they had the big filtration works that we have.

Senator NEWLANDS. Are those filtration works natural or artificial?

Mr. SCHUSSLER. Natural filtration works. We simply ran a tunnel underneath this prehistoric lake bottom, which is filled with gravel, and which tunnel we have lined with concrete, and put in a good many thousand 1½-inch galvanized pipes, and through this tunnel we draw now 14,000,000 gallons a day, which we can increase easily to 80,000,000 or 90,000,000 gallons a day.

Senator NEWLANDS. And this filter bed would be adequate to all requirements for the future?

Mr. SCHUSSLER. We can filter 150,000,000 to 200,000,000 gallons daily.

Senator NEWLANDS. Regarding the quality of the Spring Valley Water Company's water, have you ever had an outbreak of typhoid in San Francisco?

Mr. SCHUSSLER. Nothing that was ever caused by the water. Sometimes people drink impure milk, or drink water from a spring which is polluted. For instance, Lobos Creek has been mentioned as a stream that is unfit for human consumption. We are not using it now. The difficulty is that the city has built such a poor sewer in the street just above and south of that creek that by the leakage from the sewer they poisoned the water; but they can not blame us for that. We have simply discontinued the use of it. It always figures very prominently in anything the city has to say about the poor quality of the water. You look back over the records for years past and you will always find the first creek that is mentioned is Lobos Creek, and then afterwards incidentally they say "It is not now in use, because the water is polluted;" but the city polluted it, because it built a very poor sewer right close to it, bringing sewage from a large district, and the leakage or seepage from the sewer comes into the creek.

The CHAIRMAN. How long have you been with the company?

Mr. SCHUSSLER. Forty-four years.

The CHAIRMAN. From the amount of water that has been used from year to year, what has been the percentage of increase from year to year?

Mr. SCHUSSLER. I have that right here, sir.

Senator NEWLANDS. Mr. McCutcheon wishes to put in here the statement of Doctor D'Ancona, chairman of the hospital committee of the board of supervisors.

The CHAIRMAN. Let it be incorporated in the record at this point. The statement is as follows:

For the sake of the record I want to say that the board of supervisors a year ago directed the board of health to have the city chemists and city bacteriologist examine the waters of the Alameda Creek system. They started to have the waters of the entire system examined, but that proved to be too burdensome, and it seems to me that the people of the city and the Spring Valley Waterworks are entitled to the result of those examinations. They showed that the waters of the Alameda Creek system are of exceptional purity. It is a question whether any city of the United States has a water source that is hygienically as good as the water from the Alameda Creek system. I think the Spring Valley Waterworks are entitled to that knowledge, and the people of San Francisco certainly ought to know that the water from the main source of the city supply is hygienically good and of exceptional purity.

Mr. SCHUSSLER. Here is a diagram which I filed in the United States court, which illustrates very well the growth of the water consumption of San Francisco.

(The diagram is as follows:)

The daily water consumption of San Francisco, as supplied by the Spring Valley Waterworks, and by its successor, the Spring Valley Water Company, increased as follows in five-year periods:

	Gallons per day.
In 1865 the consumption was.....	2,360,000
In 1870 the consumption was.....	6,040,000
In 1875 the consumption was.....	11,680,000
In 1880 the consumption was.....	12,670,000
In 1885 the consumption was.....	17,050,000
In 1890 the consumption was.....	20,430,000
In 1895 the consumption was.....	19,900,000
In 1900 the consumption was.....	25,470,000
In 1905 the consumption was.....	34,890,000

In 1906 (the earthquake year) the consumption fell to 29,200,000 gallons per day, but is gradually rising, and will probably inside of two years again fully equal the consumption during 1905.

The CHAIRMAN. At the same percentage of growth that has taken place in the past, how many years would it be before the supply of water now within reach of your company would be exhausted?

Mr. SCHUSSLER. That depends somewhat upon the rate of growth of the city.

The CHAIRMAN. Assuming the growth to be in the future at the same rate as in the past.

Mr. SCHUSSLER. You can not very well assume that, because experience in American cities is that as the population grows, the per capita consumption grows with it. For instance, when I first took hold of the works in 1864, we used to supply 20 gallons a head, and that was ample to satisfy everybody. They were glad to get it. A few years later, five or six years later, when people had made money, they put in more bath tubs and got to be more extravagant with water. They wanted to have flowers and gardens and one thing or another, and the consumption rose to 40 gallons per head.

Senator FULTON. Can't you give it to us, assuming this basis—

Senator SMOOT. Put it in this form: What population is it possible for the Spring Valley Water Company to furnish with water, provided they have 135,000,000 gallons developed, the amount you say you can develop.

Mr. SCHUSSLER. The present daily per capita consumption is about 80 gallons, but when you have a consumption of 100 gallons per head, per day as they do in large eastern cities, that would represent a population of about 1,350,000 inhabitants. We could guarantee to supply that amount.

The CHAIRMAN. From the reserves now at your command.

Mr. SCHUSSLER. Now owned by this company.

Senator FULTON. At the present rate of growth, how long would that be?

Mr. SCHUSSLER. That would probably be about fifty or sixty years.

Senator SMOOT. If they do not have any more earthquakes.

Mr. SCHUSSLER. We do not mind the earthquakes. It was the fire that made the trouble for us.

The CHAIRMAN. It seems to me we have heard sufficient from this side of the case.

Mr. McCUTCHEON. I have some things that I want to call your attention to on this question of other water supplies. I have some photographs which I think will give you better information than anything else. I want to show you some actual reservoirs with the water in them, that are open to purchase by San Francisco and that have been offered to San Francisco by the Spring Valley Water Company, and the reply made that the city of San Francisco did not want to consider anything of that kind, but simply wanted a price upon the company's property as it now exists.

The CHAIRMAN. You have had two hours and a half already.

Mr. McCUTCHEON. I do not want to trespass on your time further and I will not take very long, but I think this is very important information on a subject on which you say you want additional light.

Senator FULTON. Was that presented to the House committee?

Mr. McCUTCHEON. No, sir; it was obtained afterwards.

The CHAIRMAN. Why can not these photographs be incorporated as a part of your remarks?

Mr. McCUTCHEON. They can be, but I want to call your attention to them.

The CHAIRMAN. You can leave them with the committee.

(At 1 o'clock p. m. the committee took a recess until 1.30 o'clock p. m., when the hearing was resumed as follows:)

Mr. SCHUSSLER. May I make a slight addition to the statement I made a while ago?

The CHAIRMAN. Yes.

Mr. SCHUSSLER. I remember now that there are some lakes up in the headwaters of the American River watershed. I think I stated that I did not think there were any large lakes at the upper levels, to speak of. There are some lakes that could be used for reservoirs by building dams in the mountains, so as to catch part of the snow water up there and thus replenish the supply below.

**FURTHER STATEMENT OF EDWARD J. McCUTCHEON, ESQ., ON
BEHALF OF THE SPRING VALLEY WATER COMPANY.**

Mr. McCUTCHEON. Mr. Chairman and gentlemen of the committee, taking up now the question of other water supplies available for San Francisco (and I refer particularly to supplies having their source in the Sierra Nevada Mountains), we are not without information upon this subject from the representatives of the city of San Francisco. You gentlemen have probably been furnished with a pamphlet entitled "Reports of the water supplies of San Francisco, 1900 to 1908, inclusive." This is a publication which was issued by the representatives of the city, and which was used before the House committee, and I assume it has been filed with this committee.

The CHAIRMAN. We have only one or two copies.

Mr. McCUTCHEON. The last paper which is set forth in that publication is a copy of a report from two engineers, Messrs. Marks and Fitzgerald, who state the quantity of water which can be withdrawn for San Francisco under certain conditions from this Hetch Hetchy system.

Mr. Fitzgerald is an engineer residing in the State of Massachusetts. C. D. Marks is the professor of engineering at Stanford University. It has been said that those two gentlemen have reported that this is the most available supply for San Francisco.

So far as that statement is concerned, I am warranted from the record in saying that there is nothing to indicate that they ever considered any other Sierra supply than the Hetch Hetchy, or that they ever considered any other supply than Hetch Hetchy as available for San Francisco. In that report they deal with Hetch Hetchy and Hetch Hetchy only.

As I have said, C. D. Marks, whose name is signed to that report, is the professor of engineering at Stanford University. Within eighteen months Professor Marks delivered before the Commonwealth Club, of San Francisco, an address on the water supply of San Francisco, in which he said:

It can not be said that the physical data now available are such as to admit of a reliable comparison of the relative values of the various sources of water supply for San Francisco from the Sierras.

Now, that comes from one of the men employed by San Francisco to render a report upon this Hetch Hetchy supply only. It is true that statement was made by Professor Marks some time before he signed that report with reference to the quantity of water which could be withdrawn from Hetch Hetchy. It is also true that there is nothing in the record before you to indicate or intimate that between the time Professor Marks made that statement and the time when he signed the report which is embodied in the pamphlet to which I have called your attention, he made any examination whatever of any other Sierra supply than Hetch Hetchy. So that if his statement made before the Commonwealth Club, that the available data at hand were insufficient to determine which was the most available supply for San Francisco, was correct, the statement is equally correct now, so far as any showing made here is concerned. There are no more data before this committee upon that subject than there existed at the time Professor Marks made this statement.

I said to you this morning that Mr. C. E. Grunsky, who was the city engineer of San Francisco in 1901-2, was the originator, so to speak, of this Hetch Hetchy plan. At any rate he was the first engineer to make any report concerning it.

In this same pamphlet, filed here by San Francisco, is the statement made by Mr. Grunsky that I now quote:

In the case of San Francisco there is no single source of supply so preeminently available that it could without question rule out others from comparison.

Those two statements come from engineers employed by the city of San Francisco, and I ask in all fairness, how can it be said with any show of sincerity that it appears here that San Francisco is dependent upon this Hetch Hetchy source?

Now mark you, these gentlemen were dealing, not with supplies in the near neighborhood of San Francisco, but they were dealing with all of the supplies which might be said to be available for a municipal supply.

Mr. PHELAN. Any supply in the mountains would be equally objectionable to you.

Mr. McCUTCHEON. I do not know that that is so, and I do not know that that makes any difference. If you mean by that that I would object to the city and county of San Francisco coming before this committee to get any supply, in view of the attitude which it has manifested toward this public-service corporation, I am candid enough to say to you that I would object, if that answers your question. I am not here under the guise of representing any of these organizations that are concerned with the preservation of the beauties of the Sierras or the beauties of nature. I am here representing this corporation, which has a very large investment, and I do not think that it is necessary that I should make any apology for appearing before this committee.

Now, I quote from the proceedings before the House committee when this subject was under consideration.

Mr. Hammond, a member of that committee, put this question to Mr. Phelan, who was there the spokesman for San Francisco, as he is here:

We have listened to the engineers—

Said Mr. Hammond—

but I do not understand that the Tuolumne is the only Sierra supply.

Mr. PHELAN. By no means.

I will not take the time now to call your attention to it in detail, because you have the report of the House proceedings before you; but I state to you that that record shows that it was said unqualifiedly by the representatives of San Francisco that they could get other Sierra sources of supply, but that it was simply a question of money. It was not claimed before the House committee (it could not be claimed, because it is not the fact) that there were not other sources of supply in the Sierras of equal purity and equal in quantity to the Hetch Hetchy system. I state that unqualifiedly.

It was said that the other Sierra supplies had become the subject of private ownership. I quoted to the House committee—and I think it is not necessary that I should take the time of this committee to call attention to it—I quoted verbatim a provision from the charter of San Francisco, adopted as late as 1907, which provides that the city shall have power to acquire, by purchase or condemnation, anywhere within the State of California, lands and water for reservoirs, aqueducts, flumes, and conduits for a municipal supply of water for the city and county of San Francisco. So that if these properties of which they speak are now the subject of private ownership, it must be taken for granted by you gentlemen that if they will institute the proceedings which their charter provides for they can acquire these properties. At any rate, it will certainly not be assumed by you, in the absence of an effort by San Francisco to acquire these properties, that they are unavailable because they happen to be the subject of private ownership.

Senator HEYBURN. Is that charter by legislative act or by municipal act?

Mr. McCUTCHEON. We have a provision in our constitution which permits any municipality by appropriate proceedings to have what is called a freeholders' convention to frame a charter. After that charter is framed by the freeholders' convention, it is submitted to the voters of the municipality, and in the event of its ratification by them is in turn submitted to the legislature for its approval, and in the event that the legislature shall approve it, it becomes a law of the municipality.

Senator HEYBURN. And that charter is under those conditions?

Mr. McCUTCHEON. That charter was adopted under those conditions.

Senator HEYBURN. So that the State has ratified the right of the city to institute proceedings for the condemnation of lands in other counties, and outside of San Francisco?

Mr. McCUTCHEON. Yes. There was some doubt at the time it was enacted (and the reason for its enactment was on account of that doubt) whether the city could acquire extraterritorial property, whether it could go beyond its boundaries.

The CHAIRMAN. Under that could they resort to condemnation proceedings as to your company and its property?

Mr. McCUTCHEON. That is a matter which has been the subject of discussion. The city authorities say they can not. In my opinion, as a proposition of law, they can. At any rate, if there were any doubt of it they could very easily procure an amendment from the

legislature authorizing them to do that. The only authority that I know of on that subject, Senator, is Lewis on Eminent Domain, who states the rule generally that the use by a city of a property for the purpose of supplying it and its inhabitants with water is a superior use to the application or use of the same property by a public-service corporation. There is no question but that such legislation as that would be constitutional. The court of appeals of New York has sustained the constitutionality of such a statute.

Senator FULTON. One suggestion here in the way of opposition to the condemnation proceedings was made, that under your code of civil procedure the condemner is required to pay within thirty days.

Mr. McCUTCHEON. That is true.

Senator FULTON. That is simple legislation and not a constitutional provision.

Mr. McCUTCHEON. Oh, not constitutional, simply legislative.

Senator FULTON. It could be changed by the legislature.

Mr. McCUTCHEON. A further answer to that, in my opinion, is that it would not prevent the supervisors from voting a bond issue in advance of such sum as it was satisfied would cover the value of this property, and paying for it within thirty days. That is certainly no obstacle.

Senator FLINT. Do you think that is a practicable proposition, to do what you have stated?

Mr. McCUTCHEON. I do not think it is impracticable. Why is it?

Senator FLINT. Do you think the people of the municipality would take a vote upon a bond issue for an indefinite amount?

Mr. McCUTCHEON. I do not say an indefinite amount, and I make another suggestion in answer to that. I do not suppose there is a shadow of doubt that the owners of this property would be very glad to accept the bonds of the city in payment for the property.

Mr. PHELAN. There is no law for that.

Senator FLINT. That would be just the same as paying gold coin.

Senator FULTON. They could get their bonds in thirty days.

Senator NEWLANDS. Your situation seems to be this, that the city had valued these works at about \$26,000,000. The company claims in its suit that the property is worth about \$45,000,000, but has made an offer, which it has withdrawn, to turn over the property for \$32,000,000. Now, as I understand it, there has been so much contention over this, so much of feeling, as expressed in the press, public meetings, and so forth, that on the one hand the supervisors would perhaps be unwilling to express a willingness to pay anything in excess of \$26,000,000, because their motives might be misconstrued, or it might appear that they were acting under influence. On the other hand, I imagine that the Spring Valley would hesitate to make that offer of \$32,000,000, because, if rejected, it might affect the final decision in the court as to the value of their property, which they say is above \$32,000,000. Now, is there not some way by which we could suggest that you should have arbitrators and the city have arbitrators, with the Chief of Engineers of the United States Army to act as the deciding arbitrator in that matter? Do you think that would be practicable as between the city and the company?

Mr. McCUTCHEON. I do not know. As you can well understand, I am not authorized to speak on the subject.

Senator FLINT. The city has no authority to do that.

Mr. McCUTCHEON. We offered to arbitrate with them, and we offered it in good faith.

Senator NEWLANDS. I was suggesting that while the supervisors have no authority to make an offer, they could state to the company, after such a decision was reached, as to what its real value was; that if the Spring Valley Water Company would make the offer of such and such an amount, an amount which this arbitration board concluded was a proper amount, that it would be accepted so far as the supervisors were concerned, and that they would recommend to the voters the acceptance of that amount. As it is, neither side seems disposed to name a price, either a price that the Spring Valley Water Company would accept or that the city itself or the supervisors are willing to pay for it.

Mr. PHELAN. Will you ask Mr. McCutcheon whether he would resist a suit in condemnation? We question the right of the city to condemn, but he seems to concede it now. Will he dispute the right of the city to condemn, or will he resist a suit in condemnation?

Mr. McCUTCHEON. I am satisfied the company will not resist it, but I am not authorized to bind it.

Senator FLINT. Then would you both be willing to agree to a proposition of condemnation?

Mr. McCUTCHEON. I have no technical authority, but I am satisfied that the company would not resist any such application as that.

Senator FLINT. What is your idea, Mayor?

Mr. PHELAN. I think that might possibly be a solution of it. Our people have thought that they could not proceed in condemnation because they could not under the law assert a higher or superior use, and I think Judge Dillon, of New York, without examining the law very carefully, advised our then city attorney, Mr. Long, that we had no such right; second, that it was impracticable, because we have to make payment within thirty days after the judgment in condemnation. That might possibly be overcome.

Senator FLINT. That could be overcome, because any agreement you might make between the Spring Valley Water Company and the municipality could be adopted by the legislature, and would be so adopted without a dissenting voice. That has been my experience in a general way with the Los Angeles project, and that is why I suggest it. I am very glad Senator Newlands brought it out, and I should be glad if it would be possible for the Spring Valley Water Company and you, Mr. Phelan, as the former mayor of the city, representing the city, to come to an agreement in a general way.

Mr. PHELAN. I am merely giving my opinion.

Senator FLINT. I know it, but I have no doubt that could be carried out in a very short period and this controversy settled as far as this is concerned.

Senator FULTON. That would not settle it as far as turning over Hetch Hetchy is concerned, as far as my vote goes, because it depends on a different proposition.

Senator NEWLANDS. But it relieves the situation of that complication at least.

Senator FLINT. Yes.

Senator NEWLANDS. Now, as I understand it, whether the city acquires Hetch Hetchy or not it needs the Spring Valley Water Works.

Mr. PHELAN. Absolutely.

Senator NEWLANDS. On the other hand, the Spring Valley Company is willing to turn over its property at a fair price, and counsel says that company will raise no technical objection to a suit in condemnation, and he thinks also that they would be willing to accept the amount of the judgment in the bonds of the city. It seems to me, as Senator Flint suggests, that the legislative authority could be gotten very quickly for proceedings of that kind.

Mr. PHELAN. The bonds of the city have to be sold by advertising, so the charter would have to be amended before we could tender the bonds to the company in payment of the condemnation judgment.

Senator NEWLANDS. And that is a slow procedure, is it?

Mr. PHELAN. An amendment to the charter would be slow. It would have to be ratified by the legislature or the statute so amended that the payment would be made in four months.

Senator NEWLANDS. I suppose the company would agree that it would accept the bonds in, say, ninety days?

Mr. PHELAN. In order to vote the bonds, with the other proceedings, it would take six months.

Senator NEWLANDS. I suppose the company would agree to take the bonds?

Mr. PHELAN. I should think it would be a subject of stipulation with the city, if the agreement was perfectly amicable. I have stated that the city wants the Spring Valley Water Works property. It is not absolutely essential. The city could duplicate the plant, but it would be a great waste. They have the most available reservoir sites in and about the city and they have a pipe line and a distributing system. It is not essential, but it would be very bad business; a very bad policy. We believe most of the stock is owned by San Francisco people, and we are not despoiling our own people.

Senator SMOOT. Don't you think it would be better under the circumstances for the city even to pay \$32,000,000 for the Spring Valley Water Company than to go on with any kind of a proposition of bringing other water into the city?

Senator FLINT. That would have to be done eventually.

Mr. PHELAN. There is no question about that. The city would not be satisfied with acquiring the peninsular supply, because they would not spend any money in developing it, being a nearby source, subject to contamination. Hence the city would, in the event of purchasing the Spring Valley, go into the mountains anyhow. It would take, at the most, eight years to bring the water from the mountains, and by that time we will need all the water.

Senator NEWLANDS. Taking all the sites together around there, I think they ought within ten, fifteen, or twenty years, to get a mountain supply.

Senator SMOOT. Would Lake Eleanor be sufficient?

Mr. PHELAN. Under the permit from the Secretary of the Interior we are required first to develop Lake Eleanor. There are private lands in Lake Eleanor which we have purchased. We have purchased Hetch Hetchy lands, and we are negotiating for the Lake Eleanor lands, and in the permit we are obliged to develop Lake Eleanor before we take Hetch Hetchy. That will give us 60,000,000 gallons a day; the 60,000,000 gallons would not pay us for going to the mountains, because we will soon require 60,000,000 gallons. About the

bay of San Francisco now there are 800,000 people, and possibly by that time there will be twice that number, and they are all waiting for the mountain supply. The cities about the bay, including San Francisco, are in grave danger of a water drouth.

Senator NEWLANDS. I think as far as San Francisco is concerned, they can supply that city for a great many years, but I do believe, with the growth of the communities around there, it will be necessary some time for them to go into a joint effort to bring down a considerable supply from some other source.

Senator FULTON. Are these outside cities getting supplies from independent sources?

Mr. PHELAN. Local and near-by sources.

Senator FULTON. Independent of Spring Valley?

Mr. PHELAN. Yes; independent of Spring Valley.

Senator FLINT. The legislature is now considering, if it has not already passed, a bill providing for the formation of water districts, so that two or three municipalities or four or five can combine in a bond issue which shall be on the entire water district.

Mr. McCUTCHEON. Do you know whether that is intended to be accomplished through an amendment to the constitution?

Senator FLINT. I have not examined the question.

Mr. McCUTCHEON. Of course, the statute itself would not be valid, in view of the existing constitution.

Senator FLINT. I understand it would be an amendment to the constitution.

Mr. McCUTCHEON. It would take a long time to amend the constitution.

Senator NEWLANDS. If the supervisors should to-day pass a resolution, stating that if the Spring Valley Water Works would, under the charter, and pursuant to its terms, make an offer of its entire property for \$32,000,000, or of the entire property, less the Merced property, for \$28,000,000, that the supervisors would then refer that to the people with their recommendation that it be adopted, do you think the Spring Valley Company would upon the passage of such a resolution (which is all they can do under their charter) make an offer of \$32,000,000 with Merced, or \$28,000,000 without?

Mr. McCUTCHEON. The only way I can answer that is that I have no reason to believe that the company would not. That was what Captain Payson proposed to do in his letter. He stated to the supervisors, in the letter which I have read to you, that if they would show a friendly disposition toward the offer which he had made, he would call the stockholders together and have it approved. That was the last expression upon the subject, and, so far as I have been informed, that was the last expression of the directors among themselves, but I have no authority to bind the company on that question.

Senator NEWLANDS. I can understand how the Spring Valley company would be unwilling to make an offer unless they had some assurance that it would be favorably received, because it would affect their status in the litigation now pending.

Senator HEYBURN. It would be an admission as to the value of their own property.

Senator NEWLANDS. Yes, where it is claimed that the value of the property is much above that. Therefore it seems to me proper that the city authorities should give some such expression.

STATEMENT OF WARREN OLNEY, ESQ., EX-MAYOR OF OAKLAND, CAL.

[Before the House Committee on the Public Lands.]

Mr. OLNEY. Mr. Chairman and gentlemen of the committee, since the adjournment yesterday I have read the proceedings had before this committee and feel very well satisfied that all has been said that is necessary to be said on behalf of the city of San Francisco. But the other cities around the bay of San Francisco are really as much interested in this proposition as is the city of San Francisco itself. This I will attempt to show you.

I owe a somewhat divided allegiance. For nearly forty years I have practiced my profession in the city of San Francisco, but for thirty-five years I have lived in the city of Oakland. My social relations are in that city and in Berkeley. I was honored by the choice of the people of Oakland for the post of mayor some few years ago. My term has expired, but I am still interested in the welfare of that city, and when the city of San Francisco asked me to come here to represent them before this committee, my first inclination—my first intention—was to decline for business reasons, but when I thought of the interest of Oakland in this question, I came to the conclusion it was my duty to appear before you.

The city of Oakland is in a very much worse situation, so far as its water supply is concerned, than the city of San Francisco. The city of Oakland is supplied by a little creek called San Leandro Creek, to the southeast of the city. The area of the watershed of San Leandro Creek does not exceed 40 square miles. It runs through a section of country used for pasturage purposes. The water is impounded near the upper edge of the valley, and there, in order to make it fit for use, it is filtered by the water company, which has a large apparatus for filtering the water.

The CHAIRMAN. The city of Oakland does not own its own water supply?

Mr. OLNEY. It does not own its own water supply. The city of Oakland was a village at the time the Spring Valley Waterworks purchased certain water rights in the Calaveras Valley, the Calaveras Valley and Calaveras Creek being tributary to Alameda Creek. You will understand that Alameda Creek is far and away the largest stream of water anywhere in the vicinity of San Francisco. It is on our side of the bay. It is at our doors, and when Oakland was a village and the city of San Francisco, after having surveys made, had come to the conclusion that it would make use of Alameda Creek for the purpose of supplying it with water, the city awoke one morning, as was said in one of the speeches here, to find that the Spring Valley Waterworks had stolen, a march within two or three days previous to the news getting out, had purchased certain water rights which gave it control of the water supply.

Mr. HAMMOND. Of Oakland?

Mr. OLNEY. Of the natural water supply of Oakland. But I mean it gave it control of the waters of Alameda Creek. I have hung up a map here which I fear you gentlemen sitting at the other end of the table can not see, but I can point to certain parts of the map and by

relative locations you can understand what I am trying to show. Here is the bay of San Francisco, the southern end of the bay. San Francisco is here on a narrow peninsula, between the bay and the ocean. Across the bay, on the east side of it, is the city of Oakland, and farther to the north is the city of Berkeley, where the State University is situated, now containing 30,000 or 40,000 people, and to the north of that still is a new city, called Richmond, grown up within the last four or five years, until it has become a very vigorous municipality, containing a great many thousand people. There are a great many thousand people, how many I do not know, and you would have to take a census there every six months to know what that population is. Then, to the south of Oakland is the city of Alameda, where Congressman Knowland lives. To the south of that is the city of San Leandro, and farther south yet the city of Hayward, and here is Alameda Creek, with a watershed of nearly 660 square miles, coming out of a canyon in the mountains, debouching on the plain at the city of Niles. The water companies say they can develop the waters of that creek so as to give to the city of San Francisco 100,000,000 gallons per day.

The CHAIRMAN. They are not using the waters of Alameda Creek at this time?

Mr. McCUTCHEON. Yes, sir; to the extent of 18,000,000 gallons a day.

Mr. OLNEY. They claim to use 16,000,000 gallons per day.

Mr. McCUTCHEON. Mr. Olney is correct.

The CHAIRMAN. You obtain no water at Oakland from any source except from the San Leandro?

Mr. OLNEY. I am coming to that in a moment. The San Leandro Creek, as I said, is a small creek, and it does not furnish water enough and is not of a good quality. There is a smaller creek not included on this map. San Leandro Creek can probably be used for the city of Oakland, and the water rights now attached thereto at present belong to the Oakland Water Company.

The CHAIRMAN. What is the Oakland Water Company?

Mr. OLNEY. It is the company that supplies the city of Oakland with water. It is the successor of the old Contra Costa Water Company, which has been supplying the city since it was a village.

The CHAIRMAN. Has it any connection with the Spring Valley Company?

Mr. OLNEY. No; not openly.

Mr. McCUTCHEON. Nor secretly.

Mr. OLNEY. I had some experience while I was in office that led me to believe that they were acting in conjunction.

The CHAIRMAN. I do not know that there would be anything criminal about the same people being interested in the same water supply.

Mr. McCUTCHEON. I only made that answer because of the peculiar phraseology of Mr. Olney's statement, Mr. Chairman.

Mr. OLNEY. I made that statement advisedly, and from bitter experience. I do not know that there is any connection at all between the two except that natural connection between two parties wanting to obtain the same object. [Laughter.] The waters of the San Pablo Creek must be used for the supply of these cities to the north

of the city of Oakland. San Leandro Creek is not sufficient, and for years past, ever since Oakland came to be a city of 50,000 people—she has now, they claim, over 200,000, probably 200,000 people—

The CHAIRMAN. Mr. Olney, is this additional source which you now speak of utilized for irrigation purposes?

Mr. OLNEY. No, sir.

The CHAIRMAN. They do not irrigate in that locality?

Mr. OLNEY. There is no irrigation in that locality at all.

The CHAIRMAN. So that practically it is not utilized at all at this time?

Mr. OLNEY. I do not quite catch your meaning.

The CHAIRMAN. The small creek that you propose for the Oakland water supply is not being used for domestic purposes or irrigation purposes, or any other purposes except to run to the sea?

Mr. OLNEY. It is not used except in this way; I will come in a moment to speak about the gravel beds situated at the mouths of these creeks. Wells have been sunk in the gravel beds at the mouth of the Pinole Creek, and of San Pablo Creek, and water is being pumped from there to supply the cities in the immediate vicinity of those wells. The question of the gravel bed is one of considerable importance, and if I have an opportunity I will take it up.

The CHAIRMAN. I do not think it is necessary to elaborate that or enter into it at great detail, because, at the very best, it is related to this question only remotely. I simply asked the question to bring out the fact in a general way whether, in order to secure the additional supply that she might need, Oakland would find it necessary to secure supplies that are now being utilized, partially or wholly, in other ways and by other communities.

Mr. OLNEY. It is partially used.

The CHAIRMAN. That is all I wanted. As I take it, the only interest that the committee has in this whole question of Oakland's water supply is this: Does the city of Oakland at this time need additional sources of water supply?

Mr. OLNEY. Most undoubtedly.

The CHAIRMAN. There are no available sources in the immediate vicinity other than those that you have mentioned, which are somewhat questionable, both as to quantity and quality?

Mr. OLNEY. None whatever, sir.

The CHAIRMAN. That being the case, Oakland is interested in an increased supply being brought to the bay from the Sierras?

Mr. OLNEY. That is the point, sir, exactly.

The CHAIRMAN. That is the point that is interesting to the committee, whether or not the city of Oakland and surrounding communities have an interest in having this water brought from the Sierras, by reason of the fact that they can not greatly enlarge their supply and they expect a largely increased population. I suppose you assume that the city of Oakland is going to continue to grow?

Mr. OLNEY. Not only the city of Oakland is going to continue to grow, but all the cities along the east side of the bay.

The CHAIRMAN. How large a population have you in Oakland?

Mr. OLNEY. I suppose we have a population of about 200,000 in Oakland.

The CHAIRMAN. How large a population has Berkeley?

Mr. OLNEY. Berkeley must have 40,000 or 50,000.

The CHAIRMAN. And San Leandro?

Mr. OLNEY. San Leandro does not have more than 3,000 or 4,000.

The CHAIRMAN. What is this new town?

Mr. OLNEY. Alameda has about 15,000.

The CHAIRMAN. Richmond is the terminus of the Santa Fe Railroad?

Mr. OLNEY. Yes, sir. It has a population, as I said before——

The CHAIRMAN. Has Richmond a good harbor?

Mr. OLNEY. Yes; a good harbor; deep water there.

The CHAIRMAN. So that ultimately you expect a very large population on the east side of the bay?

Mr. OLNEY. There is a very large population now on the east side of the bay, and in a few years' time it will be doubled and doubled again.

The CHAIRMAN. Now, this population on the east side of the bay is reached directly from any system that might come from the Sierras; in fact, would tap the Sierra system before San Francisco tapped it?

Mr. OLNEY. Yes, sir; it comes right by our doors. The pipe line that would be constructed from the Hetch Hetchy Valley comes right by our doors, and if the Spring Valley Company will let go its hold on the Alameda Creek we can get supplies for the east side of the bay from the Alameda Creek.

The CHAIRMAN. You could not get a supply from Alameda Creek for an unlimited population?

Mr. OLNEY. No, sir; not for an unlimited population; but I want to show you that the 16,000,000 gallons per day which the Alameda Water Company is diverting from our side of the bay to the east side of the bay is all that can be supplied without injury, positive injury, to Alameda County.

The CHAIRMAN. In reference to the water company's letting go their hold on Alameda Creek, they simply hold Alameda Creek by reason of their use of it, do they not?

Mr. OLNEY. That is all.

The CHAIRMAN. If you had the kind of water laws in California that we have in Wyoming the Spring Valley Water Company could not worry you for a moment in regard to a drop of the water of Alameda Creek not used. This whole controversy brings very vividly to mind the unfortunate situation of your water rights in the State of California, if I may make that suggestion.

Mr. OLNEY. I agree with the chairman of your committee on that proposition, that our own laws relating to the utilization of water are defective.

The CHAIRMAN. Can you not remedy them a little, or has the harm already been done?

Mr. OLNEY. The harm has been done, the rights have become vested, and it is impossible to make any change. The counsel for the Spring Valley Water Company says that it is now diverting 18,000,000 gallons per day. The information that I have is that it has never diverted that much.

Mr. McCUTCHEON. I think your figure is nearer correct than mine; I think that 16,000,000 is nearer.

Mr. OLNEY. I was going to say that I have defended some suits brought by the Spring Valley Water Company, and all that the com-

pany claimed was the right to divert 16,000,000 gallons per day, and if you divert more than that you will find yourself in trouble with some of the farmers on the creek below.

The CHAIRMAN. However, Mr. Olney, if the use of Alameda Creek was diverted from San Francisco to Oakland, and the source was further developed so as to furnish you an increased supply, that would, by that much, diminish not only the present but prospective supply for San Francisco. Therefore, this shifting and adjustment you refer to would not increase the available water supply generally in the region?

Mr. OLNEY. Not a bit.

The CHAIRMAN. Because that is one of the sources that San Francisco has been depending upon for an increase in her supply in the future?

Mr. OLNEY. That is it exactly.

The CHAIRMAN. So that after all the question of whether you shall have Alameda Creek or not is not an important one in this discussion, because it would simply mean the adjustment and the shifting of conditions; it would not increase the available water supply in that locality at all?

Mr. OLNEY. Not at all.

The CHAIRMAN. It is simply a question of whether the cities on the east side of the bay—the cities on the peninsula—shall use the supply of Alameda Creek, and the fact still remains that, with the vastly increasing population around San Francisco Bay, with a prospect of an enormous population, ultimately those populations must go to the Sierras for a water supply?

Mr. OLNEY. That is it exactly, and I simply want to bring out the fact now, as it is very evident that the situation is understood by the committee, that it is impossible to develop any great supply of water from Alameda Creek. It has been said here that the Spring Valley Water Company can increase its supply so as to furnish 100,000,000 gallons per day to the city of San Francisco. That is to say, using the water supply that is on the peninsula and utilizing the waters of Alameda Creek, it can increase its supply to 100,000,000 gallons. Now, the most of this increase must necessarily come from Alameda Creek, for, as I explained to you a moment ago, the watershed of Alameda Creek is 600 square miles and it is far and away the largest stream in this vicinity of the bay. There are some as large streams in Santa Clara Valley, but in this vicinity it is the largest. You take Alameda Creek, now, to show you where Oakland gets the best part of its supply at the present time. This little San Leandro Creek not being sufficient, a pipe line has been laid near the town of Niles, and pumping stations erected there to pump the water from wells sunk in the gravel beds kept full of water by Alameda Creek. There is where Oakland is getting her present supply. If the Spring Valley Water Company utilizes all of the waters of Alameda Creek it cuts off that supply from those gravel beds, and Oakland will be left with this little San Leandro Creek. And that is not all.

The CHAIRMAN. Does the Spring Valley Water Company tap Alameda Creek above or below the gravel beds?

Mr. OLNEY. Both. These wells, gentlemen, from which Oakland receives its general supply by pumps and the pipe line, are at the edge of the bay below the town of Niles. All those streams coming

from those mountains have brought down gravel and deposited it at the mouth, where the fall of the land is such that the speed of the running water is lowered, and the gravel settles there, and in the course of time there has been laid down a deposit of alluvium, so that it sometimes runs from 5 to 50 feet of alluvium on top of the gravel beds at the mouths of all these streams. Then water has permeated through these gravel beds and the water coming down the streams flows into these gravel beds and fills them up, with the result that this alluvium on top is becoming saturated by the water from these streams, and we have there the finest orchards and vineyards of any portion of California, the finest homes, the most thickly settled country. Now at Niles, on that gravel bed, there is an illustration of what has been done by the people in improving the land. If the water is entirely pumped out of those gravel beds, or if the Alameda Creek is diverted before it gets to those gravel beds, then, of course, those people who have lands situated on top of these gravel beds, or more correctly put in this way, the people who own the land on which these gravel beds are situated, are deprived of the water. Their lands are injured; they can not get their water for their own use, and the result has been that the courts have interfered and have enjoined water companies from pumping the water out of these gravel beds.

A striking illustration was in the Santa Clara Valley. The Bay Cities Water Company got the water rights on Coyote Creek, which heads on the east side of Mount Hamilton, flows around it, comes down to the great Santa Clara Valley, and then finally enters into the bay. In the summer time Coyote Creek or river has no water in it. You look at it and you see nothing but gravel. But the water from Coyote Creek enriches the soil of all that portion of Santa Clara Valley. It permeates through this thin strata of gravel, and when the Bay Cities Water Company attempted to shut off the flow of the water of the Coyote Creek with a dam and then erect pumping plants for the purpose of drawing the water from these gravel beds and taking it to San Francisco, in rivalry with the Spring Valley Waterworks, the courts of Santa Clara County enjoined the damming and enjoined the pumping of the water from these gravel beds on the ground that it would ruin the farms overlaying them. Now, take Alameda Creek. The Spring Valley Water Company claims to own the water rights of all that watershed. The Bay Cities Water Company contests that right, claims that it owns all of the water rights on Isabel Creek, Del Valle Creek, and Mocha Creek, indicated in yellow on this map.

Mr. HAMMOND. What company?

Mr. OLNEY. The Bay Cities Water Company.

Mr. HAMMOND. Where is that company?

Mr. OLNEY. In San Francisco. It undertook, as I said, to set up a water plant and supply the city of San Francisco and the other cities about the bay with water from Coyote Creek, taken from Santa Clara Valley and from the waters of Alameda Creek. But so far as Coyote Creek, its principal source of supply, is concerned, the courts have enjoined taking that water out on the ground that it would ruin the farms of Santa Clara Valley.

Mr. HAMMOND. Is this Bay Cities Water Company a going concern?

Mr. OLNEY. It is a going concern; it is one of the concerns that,

since it was enjoined by the superior court of Santa Clara County, has obtained a supply of water from the mountains and offers to bring it and furnish the city of San Francisco with water from its Sierra Nevada supply.

The CHAIRMAN. The Bay Cities Water Company has, at this time, no pipe lines and is furnishing no water to the city of San Francisco?

Mr. OLNEY. That is correct.

The CHAIRMAN. It is an organization proposing to do something; is that it?

Mr. OLNEY. Yes. It has spent a good deal of money in trying to develop water on Coyote Creek.

The CHAIRMAN. Where is Coyote Creek.

Mr. OLNEY. As I explained, it heads on the southeast side of Mount Hamilton and comes down through a great valley.

The CHAIRMAN. What was the idea, to add to the supply of San Francisco?

Mr. OLNEY. No, sir.

The CHAIRMAN. Did they expect to get enough water out of Coyote Creek to supply San Francisco?

Mr. OLNEY. Not out of the creek, but out of the gravel beds.

Mr. PHELAN. Subterranean.

The CHAIRMAN. How large a drainage has that creek?

Mr. OLNEY. Coyote Creek has a drainage of about 400 miles.

Mr. ROBINSON. I would like to inquire if all this is relevant?

The CHAIRMAN. I think the gentleman's inquiry is very proper. Mr. Olney, the committee desires to give you all the time necessary to state your view of the matter, and the statement you are making is exceedingly interesting, but after all it only goes to the question by whom and how the water supplies immediately adjacent to San Francisco shall be utilized. The committee has gone over all that question.

Mr. HAMMOND. Unless the time is very valuable, personally I would be very glad to hear Mr. Olney on this proposition.

The CHAIRMAN. I would state to the gentleman from Minnesota that unless we are going to give another day to this subject it will be necessary to hear some of the other gentlemen, and I will make this further suggestion—the question of the amount of water available in the vicinity of San Francisco seems to me has been very clearly brought out. I think the question of the possibility of development in the vicinity of San Francisco has been pretty clearly gone over.

Mr. LONG. If you will permit me one moment—

The CHAIRMAN. I realize the fact that we could go on here for a week discussing the last drop of water that might be developed somewhere on the peninsula or in the coast range. But assuming the very largest claims that have been made for all the waters that may be obtained in the vicinity of San Francisco, no one denies the fact that ultimately those populations must go to the Sierras.

Mr. LONG. Quite right.

The CHAIRMAN. Then why should we take up our time here going into the last minute detail and the last bucket or drop of water that may be obtained in that locality? It is a very interesting discussion.

Mr. PHELAN. May I say this word? Mr. McCutcheon in his speech before you stated that the Spring Valley could develop 109,000,000 gallons of water per day in this watershed. Mr. Olney

is here to dispute that, that the water is not available, and I think Mr. McCutcheon is answered. He is urging that you should not grant this reservoir right of way because we can get the water there.

The CHAIRMAN. I understood Mr. Olney to say just at this moment that some one was insisting that Coyote Creek had water enough.

Mr. LONG. You were interrupted, Mr. Mondell—

The CHAIRMAN. I think, assuming the largest claims that have been made here of possible development in the vicinity of San Francisco, that it is still clear, from all this committee has heard, that ultimately these cities must go to the Sierras. Is there any member of the committee who is not satisfied of that fact?

Mr. HAMMOND. As I understand the proposition now advanced by Mr. Olney, there is a company known as the Bay Cities Water Company that has a Sierra supply.

Mr. OLNEY. No, I do not say that; it claims that.

Mr. HAMMOND. It comes from the Sierras through these gravel beds?

Mr. PHELAN. Will you allow me, Mr. Chairman? I will answer the gentleman in one moment. I am very familiar with it, having been engaged in that controversy. The Bay Cities Company claim the Sierra supply. They have got rights or options from people owning water rights in the mountains, and they offered that supply to San Francisco a year ago through the corrupt board of supervisors under Schmitz. There was a tremendous municipal scandal. They offered the property, for which they had paid probably, not more than \$500,000, for \$10,500,000, and it all came out in the testimony before the grand jury and in a libel suit, and they have now abandoned that; they have been driven to the wall, and I am told by their representatives that they intend to develop that now, if at all, for power purposes, so it is a negligible quantity; it is not before us at all.

The CHAIRMAN. It is a dream of water.

Mr. PHELAN. It is a dream.

Mr. HAMMOND. Is it not a little bit more than a dream if they have a supply and it is sufficient for the city of San Francisco?

Mr. PHELAN. That is disputed by the city engineers. They have not the supply, but they have rights and options. What they purchased was the El Dorado Deep Water and Gravel Company for about \$200,000, from a promoter named Cragin. That is all they own, and since then they have been acquiring options. They have abandoned all that now, in view of this municipal scandal, which contemplated putting upon San Francisco an inferior supply not wholly owned by the company.

Mr. HAMMOND. You assert, then, that the Bay Cities Company at the present time has not a valid option upon a Sierra water supply?

Mr. PHELAN. They have what is known as the "El Dorado Deep Water and Gravel Company," a property which they paid about \$150,000 or \$200,000 for, and that water is now supplying the consumers in and about the city of Placerville, and that is about all they have in fee or ownership. What they have besides, as has come out in the testimony, are options.

Mr. MCCUTCHEON. Options on what?

Mr. PHELAN. On water rights.

Mr. HAMMOND. Are their options valid and subsisting rights at this time?

Mr. PHELAN. No; they are not. I suppose they could renew them. There are no less than half a dozen water supplies from the Sierras but they are all obstructed by ownership, developments made by power companies, used by power companies, so the Tuolumne is practically the only one that is free, as our engineers will inform you. We have a map showing these various supplies, and our engineers have decided that the Tuolumne is the only one that is practically free and can be acquired by the city.

Mr. HAMMOND. We have listened to the engineers, but I did not understand that the Tuolumne is the only Sierra supply.

Mr. PHELAN. By no means.

Mr. HAMMOND. We have been told it is a very good one; perhaps the best one.

Mr. PHELAN. It is the only one with a reservoir.

Mr. HAMMOND. It has been claimed, on the other hand, that there are other supplies, and that the Spring Valley Water Company has plenty of water; but now it appears that there is another company, called the Bay Cities Company, that has options and is ready to sell water. Now, personally, speaking only for myself, I am interested to know just what these companies have, whether they can supply water in the quantities that they claim, and the ultimate conclusion that may be reached. A mere assertion of the ultimate conclusion, while it may be interesting, is not so convincing in details that we can reach an ultimate conclusion for ourselves. That is the reason why, personally, I would be very glad to hear Mr. Olney upon these various supplies, and especially upon this Bay Cities Company's supply.

Mr. PHELAN. When Mr. Olney concludes Mr. Galloway can give you the information.

Mr. OLNEY. I am not proposing to speak for the Bay Cities Water Company. I am only telling what they attempted to do in the immediate vicinity of San Jose and San Francisco, and they failed by reason of the injunction put upon them by the courts. I want to call attention to the fact, and I will be very brief—if I may be allowed ten minutes, that is all I want—I was about to call attention to the fact that the water could not be diverted from Alameda Creek beyond 16,000,000 gallons per day. That is to say, there are the same conditions applying to the waters of Alameda Creek in Pleasanton and Livermore valleys that apply to Coyote Creek, where the courts enjoined taking the water out.

Mr. McCUTCHEON. You do not mean Livermore Valley.

Mr. OLNEY. I do; Pleasanton and Livermore valleys.

Mr. GRONNA. Where does the water from the Coyote Creek come from?

Mr. OLNEY. From the coast range, or Mount Hamilton Range, as it is called. The San Joaquin Valley lies between the coast range and the Sierras, and the Coyote Creek and Alameda Creek supplies come from Mount Hamilton Range, where the Lick Observatory is situated, and those streams run into the Bay of San Francisco. Therefore, they are right in the immediate vicinity of the bay and of the cities about the bay, and what I was wanting to say to you was that the Spring Valley Water Company has got the right now to divert 16,000,000 gallons per day from Alameda Creek, but they can never divert any more for the reason that in doing so it will

injure the farms about Pleasanton, in that large valley about Pleasanton, and Haywards, but the company will be enjoined by the courts just as the Bay Cities Water Company was enjoined by the courts of Santa Clara County.

The CHAIRMAN. Do they use that water for irrigation purposes?

Mr. OLNEY. No, sir; that water forms a natural irrigation for the lands overlying the gravel beds.

Mr. HAMMOND. Has the Spring Valley Water Company, as a quasi-public corporation furnishing a water supply under the statutes of California, the right of eminent domain?

Mr. OLNEY. Yes.

Mr. McCUTCHEON. Will you let me ask you a question there?

Mr. OLNEY. I do not know; if it is going to cut short my time I can not consent.

Mr. McCUTCHEON. I beg your pardon.

The CHAIRMAN. Mr. Olney, the Spring Valley Water Company claims that they can very largely increase their present source of supply in Alameda Creek by conservation.

Mr. OLNEY. I want to tell you about that. It is a legal question, and therefore I am addressing myself to it.

The CHAIRMAN. Your own contention is that it could not be done because the courts would enjoin in favor of the farmers?

Mr. OLNEY. Yes, sir; and in favor of the city of Oakland, if necessary, because the city of Oakland gets what supply it has from the gravel beds by pumping at the mouth of Alameda Creek. But if the water is stored in the reservoirs which the Spring Valley engineers say can be constructed it will shut off the water from the creek that naturally flows into the gravel bed, and of course there will be no water to pump out. It is the same way in Pleasanton Valley. A suit has already been brought against the Spring Valley waterworks by a large landowner in the vicinity of Pleasanton. The suit is brought in the superior court of Alameda County, and the judge has already rendered a decision in the case, saying that the action can be maintained and intimating that an injunction will issue. I, myself, have been retained by the Alameda Sugar Company, a corporation operating a large beet-sugar factory near the town of Niles and owning large tracts of land overlying the Niles gravel beds and the Pleasanton gravel beds, through which the Alameda Creek runs. I have been retained to bring an injunction suit, and intend to do it as soon as I can get around to it; and the effect, if the Spring Valley undertakes to divert more than 16,000,000 gallons per day from Alameda Creek, will be that she is going to be overwhelmed with suits by people whose farms and lands will be ruined thereby.

Mr. HAMMOND. Could not the company condemn the property?

Mr. OLNEY. Yes, sir; I will come to that. Of course the Spring Valley Water Company can bring suits to condemn these farming lands, but it will be found that it will ruin extensive tracts of country now thickly settled, and it would cost many more millions of dollars to condemn that land than it will to bring a water supply from the Sierra Nevada Mountains. You ask, theoretically, can the Spring Valley Water Company maintain such an action? I say it can, but practically it can not, and further than that, the public interests require that these lands should not be taken for that purpose; that the towns of Pleasanton and Niles and other villages in that vicinity

should not be ruined, nor the farming lands ruined, by taking the water so much needed in this semiarid region. If you take water from a neighborhood in this country, you take that which is as valuable as the land itself, and Spring Valley will never be permitted by the courts of California to take more than she takes now from Alameda Creek.

Now I will come to a close. There is much more to be said on this subject that has not yet been said, but I will only say this: That it will not do to say that ultimately these great cities about the bay must go to the Sierra Nevada Mountains to get their water supply.

The CHAIRMAN. You say it will not—

Mr. OLNEY. It is a question of right now. The cities about the bay must provide now for this additional water supply from the Sierras. It is not a question that we can put off. If we do put it off, it will be to our infinite injury. I will be glad to answer any question that any member of the committee may ask, if I can.

Mr. HAMMOND. How would the city of Oakland proceed to avail itself of a part of the water supply if we should decide to have a reservoir established in the Hetch Hetchy Valley?

Mr. OLNEY. That is provided for by our California law and by the disposition of the people on both sides of the bay to unite.

Mr. HAMMOND. A disposition of the people to unite on both sides of the bay is, of course, a rather vague and uncertain thing.

Mr. OLNEY. I will say this: That the statute—I drafted the statute myself, and Mr. Manson took it up to the legislature and it passed—an act by which provision is made for different cities and municipalities uniting in obtaining a water supply and dividing the water between them, and let me add right here that San Francisco is not acting for herself alone in this matter; she is acting for all the cities about the bay.

Mr. HAMMOND. Suppose the city of San Francisco should, through its authorities, object to the city of Oakland using any part of this supply, claiming that there was not enough, how could you then proceed?

Mr. OLNEY. That contingency is so remote that it is not to be conceived of. The expense of bringing that water from the Sierras is so enormous and the difference of cost between a small pipe line and a large pipe line is so small that the city of San Francisco, as a financial proposition, will be very glad to have other cities come in. I think when that is done, very likely the city of Stockton will be supplied with water, for the reason that the pipe line is located not very far from the city of Stockton, in the San Joaquin Valley. Then when it crosses this coast range and comes down this Niles Canyon it comes close to Oakland.

Mr. HAMMOND. Please inform me if the city of Oakland or any other city can avail itself of any part of the Hetch Hetchy supply, if the reservoir is there established, without the consent of the city and county of San Francisco?

Mr. OLNEY. No; not as it stands now. But, as I said before, the city of Oakland is aiding in getting this water supply, because there is an implied understanding. Our interests are identical; it is not at all improbable that the two cities will be united in one city. All

the cities about the bay will ultimately—that may be some years off—but ultimately all the cities about the bay will be united in one great municipality. I think that is conceded on all hands. They say we are not quite ready for it now, the people of Oakland say they are not quite ready for it, but they do want to unite with the people of San Francisco in getting a water supply, and telegrams have come on and been filed with you showing the action of the city council of Oakland praying you to recommend this bill for passage.

Mr. GRONNA. You believe, then, Mr. Olney, that there is an abundance of water to supply both Oakland and San Francisco in the Hetch Hetchy?

Mr. OLNEY. There is no doubt about that. I am very familiar with the topography of that country.

The CHAIRMAN. That is, in addition to the supplies already available and in use?

Mr. OLNEY. Yes. There is no disposition, so far as I know, to confiscate the property of either the Spring Valley Works or the Oakland Water Company. We want their reservoirs, we want their pipe lines, we want their water rights, and we are willing to pay a fair price for both. There is no disposition to confiscate in our part of the world. We want to pay a fair price, and are willing to do it, and neither one of these companies, nor both combined, can furnish from the streams around the bay of San Francisco the water that we will need the very first time we have three consecutive dry seasons. Oakland would be up against it in the hardest possible form at the present moment if, for the last four or five years, we had not had reasonable rainfalls, which have filled our reservoirs and these gravel beds, but just as soon as we have what has frequently happened in the history of our State, three consecutive dry years, we will have a water famine in Oakland such as has been unknown in any city in the United States.

Mr. McCUTCHEON. Even if you get Hetch Hetchy, with 2,400 second-feet prior claims to you?

Mr. OLNEY. We hope to go to Hetch Hetchy. We hope that this grant will be made by the United States to the city of San Francisco. We know that it will take some years in order to bring water to these cities, but we believe it will be done, and we trust that during that time Providence will be sufficiently bountiful to us to give us a rainfall to supply our needs in the meantime.

Mr. HAMMOND. You have not the slightest fear that there can be any disagreement between the cities of Oakland and San Francisco concerning water rates or the expenses of carrying water into Oakland? You think all of those matters are absolutely sure of adjustment on a fair and equitable basis between the two cities?

Mr. OLNEY. I have been a lawyer long enough to know that people do not always agree upon plain business propositions, and therefore I can not speak for anything of that kind. But I do say that that is the disposition.

The CHAIRMAN. I think that perhaps Mr. Long, if none of the members desire to ask any questions of Mr. Olney, can briefly answer that question; that is, so far as it can be answered at this time. It can not be definitely answered.

STATEMENT OF DR. A. H. GIANNINI.

Doctor GIANNINI. Both officially and personally I have endeavored numerous times, and I think I have indicated a disposition to sit down and talk with the officers of the Spring Valley Water Company for the purpose of arriving at some happy medium, some way of conferring relative to the fixing of a purchase price. I have endeavored on a number of occasions to have some officer of the company sit down with me, or the committee I represent in the board of supervisors so as to solve this very important question of purchasing the Spring Valley Water Company. I now reiterate the statement that I will be very glad at any time to meet the officers of the Spring Valley Water Company with a view to fixing a reasonable price for final purchase.

Senator SMOOT. Are you the attorney of the municipality?

Doctor GIANNINI. No; I am a member of the legislative body; I am chairman of the public utility committee—the committee directly concerned with this project.

Senator NEWLANDS. Doctor, is it not a fact, though, that there has been so much public feeling about this question, so many charges have been made against the supervisors who show any inclination to yield more than the city has thus far been disposed to yield, such a disposition to charge them with being unduly influenced by the corporation—is it not a fact that a good many men would hesitate to say that they would be willing to agree to a sum in excess of \$26,000,000 for that reason?

Doctor GIANNINI. I would answer no. Of course I can not speak for the remainder of the board of supervisors. The board has never, as a board, sat down for the purpose of arriving at any definite figures. We have never done that as yet. We have, on the other hand, been guided by the city attorney, our legal adviser. We can not proceed along any line whatsoever without the information or guidance of the city attorney, and it was he who directed our procedure, and it was he who told us to solicit the offers of sale at the time we did; and his interpretation or reading of the charter differs, of course, from Mr. McCutcheon's reading.

Senator NEWLANDS. Do you not think a portion of the press there, or the whole of the press, would be disposed to question the good motives of a supervisor who should recommend payment in excess of \$26,000,000?

Doctor GIANNINI. I do not know that. Personally it would not make any difference to me.

Senator NEWLANDS. I say this because my attention has been called to so many newspaper articles. There has been such sentiment created there that it strikes me it is very difficult for an honest man to express his opinions on the question without his motives being misconstrued.

Doctor GIANNINI. Without being guilty of immodesty, I think the members of the board of supervisors would not fear to do anything that they thought was right, irrespective of the opinion of the press.

Senator SMOOT. What do you think is right in the matter? Is that a leading question?

Doctor GIANNINI. That is exceedingly leading. We were directed by the city attorney to solicit offers. If we had been directed to

make an offer, I would have devoted reasonable time to the examination of those works and would have procured the desired information for the purpose of knowing what would be a reasonable offer. But we can not do that under the law. We must solicit offers of sale; however, I would be willing to consider any offer. I am willing to sit down with them and talk it over, whether it be for the purpose of arbitrating or for the purpose simply of getting a tentative offer, it makes no difference.

Senator NEWLANDS. That is, your committee?

Senator SMOOT. With a different feeling, however, than the reply which was made by the board some time in June, 1908?

Doctor GIANNINI. I think Mr. McCutcheon is pleading as a lawyer. I think he has given the charter an interpretation that I would not give it nor anyone connected with the city attorney's office. I think we proceeded along sincere and honest and proper lines. I do not know what the previous boards have done. I have been in office only since January of last year. I know that there are men on that board who have lived there for fifty or sixty years, who are old enough to be Mr. McCutcheon's father, and who have attained a very honored and respectable place in the community, and those men are interested in everything that interests San Francisco, be it a private corporation or otherwise. I do not think any of those men—certainly none of them has ever indicated to me that he would be willing to do anything that might in any way bankrupt or embarrass that company. I certainly know that I have been sincere, and Mr. McCutcheon, I think, will tell you I have been sincere, and have endeavored not only officially but privately to arrive at a *via media*.

Mr. McCUTCHEON. I may say, gentlemen, that Doctor Giannini got the impression from something I said here this morning that I had charged the members of the present board of supervisors with dishonesty. I disclaim any such intention. I did not make that charge. If I made it, I did not intend to make it. I have never had any such feeling and have no such feeling now.

Senator FULTON. I do not think anyone so understood.

Doctor GIANNINI. He challenged the fact that his company could receive reasonable treatment from the board of supervisors. I did not know but that he might have referred to the present board, and that I wish corrected, because it is exceedingly important.

Mr. McCUTCHEON. Doctor Giannini knows I have always treated the members of the board of supervisors with respect, and in my personal relations with them—

The CHAIRMAN. I think we have heard all that we need to hear from that side.

Senator NEWLANDS. I want to ask one question more. Doctor Giannini, would not this be a solution? You are not in a position to make an offer. The Spring Valley Water Company is indisposed, I imagine, to make an offer, because it might affect it in the courts as to the higher valuation claimed. How would it do for you both to agree to submit the question to arbitrators to name an amount which on the one hand you, if it is offered by the Spring Valley Water Company, will urge the voters to accept, and which, on the other hand, the directors of the Spring Valley will urge their stockholders to accept? Now, there is a matter it seems to me that clearly could be arbitrated.

Doctor GIANNINI. You know, Senator, when I was sent on I was simply sent to represent the city and not to enter into any such agreement as this. I can only speak for myself. I might say yes to that, and the other members might not agree with me. I have not the authority, and I can not do it if I wanted to. But any reasonable means that would solve the problem would be agreeable to me. There has never been a disposition on my part to do otherwise.

The CHAIRMAN. Gentlemen, this will close the hearing on the part of the company. You have had over three hours. You can file your brief here. I think that is sufficient.

Senator NEWLANDS. You propose to give the city an opportunity to be heard, do you not?

The CHAIRMAN. Certainly.

Senator NEWLANDS. And then any new matter you will give the company a chance to reply to?

Mr. McCUTCHEON. I should like to call attention to these other sources of supply.

Senator FLINT. I move that Mr. McCutcheon have fifteen minutes. (The motion was agreed to.)

FURTHER STATEMENT OF EDWARD J. McCUTCHEON, ESQ.

Mr. McCUTCHEON. I can finish in fifteen minutes. I wish to call attention to certain statements of the city engineer with reference to the other available Sierra supplies.

Among the gentlemen who appeared before the House committee on behalf of the city was Mr. Galloway, an engineer. Mr. Galloway was asked with reference to other Sierra supplies, and he made this statement:

Mr. GALLOWAY. Mr. Chairman, I do not propose, by Mr. McCutcheon or anyone else, to confuse this issue. The amount of storage on the Yuba, as I can see it, has nothing to do with the question of whether the United States grants us the use of the lands in the Hetch Hetchy Valley. If the chairman desires me to answer that question I will endeavor to do so, but I do not want to take up too much time.

The CHAIRMAN. Now, Mr. Galloway, this question has been raised, that the city of San Francisco can secure a water supply elsewhere than from the Tuolumne, and that therefore the interests of the public in the Tuolumne region, in the National Park, are so great that we should give careful consideration to the other sources of water supply; therefore, if you have information as to the storage capacity on the Yuba that would enlighten the committee, although we have gone over that proposition somewhat.

Mr. HAMMOND. It seems to me we must either take Mr. McCutcheon's statement as absolutely correct, without qualification, or else we must hear something on the other side. We have been told there is an ample supply of good water, and I am disposed to believe that is true unless we hear something to the contrary.

Mr. GALLOWAY. Mr. Chairman, you will please understand that I refuse or decline to answer Mr. McCutcheon's question because it seems to me that the patience of the committee has been drawn out—

The CHAIRMAN. Very briefly, what was your question as to the storage capacity of the upper Yuba?

Mr. McCUTCHEON. What are the storage capacities, the existing storage capacities, of the systems to which I referred, and where are they?

Mr. GALLOWAY. Let me ask you to which ones you refer, the storage capacities of the South Yuba Water Company?

Mr. McCUTCHEON. No; I have nothing to do with the South Yuba Water Company; the North Broomfield, the Eureka Company, and the Milton Ditch Company.

Mr. GALLOWAY. Those I would not be able to give the committee any information about. Mr. Bourne may have, and Mr. McCutcheon, who represents them, may have a complete water supply from the Middle Fork of the Yuba River, and I would not be able to contradict him.

Again, Mr. Galloway said (p. 387):

We do not deny that there are other sources of supply up and down the Sierra Nevada Mountains, but we do know and can present the proof that these supplies are in the hands of capitalists who would mulct the city if we attempted to get them, and this is the only supply that it is within the financial possibilities of San Francisco to develop.

Now, I am stating to you correctly the substance of the showing of those gentlemen when I say that it was admitted that there were other sources of supply in the Sierras, but that it might be necessary or would be necessary for the city to spend money in order to acquire those supplies. There was one supply to which the attention of that committee was called, and to which the attention of the city of San Francisco was called as early as September of last year.

We had in California in early days a number of hydraulic mining companies. Some of you gentlemen are from mining States and you know what hydraulic mining means. Each one of the companies to which I want to call attention was operating on a very large scale, and in order to carry on its operations it was necessary that it should have a very large supply of water. Each one of those companies acquired, in the high Sierras, at an elevation of more than 5,500 feet, large storing capacities, in which it could store water during the flood seasons, in order that it might equalize the flow and carry on business during the entire year. Those companies were the North Bloomfield Mining Company, with which Hamilton Smith, whose name is famous in the mining world, was identified, the Eureka Lake and Water Company, and the Milton Ditch Company. I do not know whether Senator Newlands is familiar with those companies or not, but he knows generally of the operations of those companies, and he knows they were on a very extensive scale. So extensive was the scale of operations that the North Bloomfield Company alone had a reservoir capacity from which it could draw throughout the entire year from 2,500 to 3,000 inches of water.

The CHAIRMAN. How many inches are required at San Francisco?

Mr. McCUTCHEON. From 2,500 to 3,000 inches would be approximately 50,000,000 gallons a day.

Now, I will show you the character of the country in which that water is gathered. It is at an elevation of 5,500 feet, in an uninhabited and uninhabitable country. Along in, I think, the latter part of the seventies (and if I am not right Senator Newlands's recollection may be better than mine) the Government instituted suits against these hydraulic mining companies and enjoined their operations, for the reason that the débris washed down from them finally found its way into the Sacramento River and was gradually interfering with its navigability. The result of the litigation was the issuance of permanent injunctions against those operations, and the properties of those companies are there in the high mountains to-day, in the market, to be bought by San Francisco or anybody else who has use for them.

Senator GAMBLE. What is the distance from San Francisco?

Mr. McCUTCHEON. It was said that it was about 40 miles farther than Hetch Hetchy, but I do not think it is 40 miles farther. Of course it goes without saying that the building of a ditch 40 miles long would not be prohibitive.

Senator HEYBURN. Would that involve pumping the water over any range?

Mr. SCHUSSLER. That water can be brought in by gravitation by a little heavier pipe line.

Mr. McCUTCHEON. It would avoid that.

Senator HEYBURN. Who owns that property?

Mr. McCUTCHEON. That is owned by the Northern Water Power Company of California, of which Mr. Bourne, president of the Spring Valley, is the principal stockholder.

Mr. PHELAN. For what price can it be purchased?

Mr. McCUTCHEON. I do not know. It was suggested to the city of San Francisco that the company would obtain an option upon it, but the city took so little interest in it as to say that it did not care to go into the subject at all.

Mr. PHELAN. You do not know approximately what it can be purchased for?

Mr. McCUTCHEON. I do not know the price, but it would be a subject of negotiation. The water is there. That is the point I am making. Its availability is demonstrated beyond the shadow of a doubt.

The CHAIRMAN. If it is controlled by the president of the same company that now furnishes water to the city of San Francisco, the city will probably have as good luck in getting that as they had with the water company.

Mr. McCUTCHEON. They can condemn it, beyond any question.

The CHAIRMAN. Oh, well, so you have admitted that they can condemn your property?

Mr. McCUTCHEON. They have never made any effort to do it.

The CHAIRMAN. You would probably be as ready to sell out as you are to sell this property.

Mr. McCUTCHEON. We offered in a formal letter to sell the plant to them for \$32,000,000.

Senator NEWLANDS. You mean offered to the city?

Mr. McCUTCHEON. Offered to the city. There [showing photograph] is one of those lakes in the mountains. There is no question about the ability of the city to acquire it, and there are a number of other reservoirs in the same locality.

Senator NEWLANDS. Regarding the North Bloomfield, I was at one time a stockholder in that, and I sold out the stock for almost nothing.

The CHAIRMAN. That would not give the city any more chance to buy that out than they have now, so there is no use to refer to that.

Senator FULTON. He is referring to it simply as an available source. They could appropriate it if they saw fit to condemn. Of course they would have to pay for it.

Mr. McCUTCHEON. Mr. Englebright, a Member of the House of Representatives, went before the House committee with reference to these properties. They happen to be in his own country. He is perfectly familiar with them, and he told the committee the character of the water, the character of the watershed, and the character of the storage capacity. Senator Flint was of the impression that there were no storage capacities up there. Not only are there storage capacities, but the storage reservoirs actually exist. They are there

to-day. There [showing photograph] is Bowman Lake, and there is no doubt about its capacity. There is the engineer's report to the effect that the dam on Bowman Lake can be raised at least 50 feet, which will more than double its capacity. It now supplies 2,500 to 3,000 inches a day. Its capacity can easily be doubled. There is no question about the water being there, and there is no question about the purity of the water.

On page 373 of the proceedings before the House committee was a statement by Mr. Englebright with reference to these properties. Mr. Englebright had been in charge of a water property in Nevada County for twenty years, was entirely familiar with the situation, and stated to the committee the character of the water, the character of the watershed, and the character of the storage capacity.

Now, there is not only that, but there is the American River, at the head of which are storage capacities which can be availed of, and, indeed, there are a number of streams; but there is one point I want to suggest to you.

Colonel Mendell, in 1877, as the appointee of the city of San Francisco (Colonel Mendell was an army engineer of very high standing), reported upon a number of sources available for San Francisco. There is absolutely nothing before you, nor was there anything before the House committee, that indicated that other sources of supply were not equally available, so far as cost, quality, and quantity of water, and availability for storage were concerned. It was said that there were these other sources, but that they would cost money. How much they will cost nobody undertakes to say. There has been no investigation by anybody representing San Francisco, to determine the cost of those other properties as compared with the cost of Hetch Hetchy. So that if it is necessary that you should have information on that score, you are entirely without any such information at the present time.

Senator HEYBURN. The North Bloomfield Company is not operating at all now?

Mr. McCUTCHEON. Not at all.

Senator HEYBURN. What is to prevent the appropriation of the water under the laws of the State?

Mr. McCUTCHEON. That water flows into the Yuba River. The Yuba River is in a country where there is no water needed for artificial irrigation, and it flows on to the sea. In addition to that the company has always kept up its storage reservoir.

Senator HEYBURN. Still there is the question of the right to the use of the water there under the laws of the State.

Mr. McCUTCHEON. I said that it is not in use. There is a small use. There is a negligible quantity used for irrigation and some for mining, but the use, compared with quantity which can be developed, is very small.

Senator SMOOT. Are there places below the present reservoir site which could be utilized as a reservoir site?

Mr. McCUTCHEON. Yes; we have plans to show that. I am sorry to have taken so much of the time of the committee.

The CHAIRMAN. Mr. Phelan, you can proceed.

**STATEMENT OF JAMES D. PHELAN, ESQ., ON BEHALF OF THE
CITY OF SAN FRANCISCO.**

Mr. PHELAN. There is present with us the chairman of the public utilities committee of the legislative body of the city of San Francisco, Doctor Giannini, as well as the city engineer, Mr. Marsden Manson. Mr. Manson is very familiar with the peninsula and with the Sierra supplies, from his long residence in California and his knowledge of engineering work.

I desire simply to state that as between the city and the company there is no feeling of vindictiveness, such as Mr. McCutcheon would indicate, nor between myself and the officers of the company is there any such feeling. Of course, we have been fighting at close range, just as merchants dispute over prices, but beyond that there is no feeling; and I must say for the company that in the graft revelations during the last few years they have been in nowise involved. They resorted, as has been explained to you by Mr. McCutcheon, to the federal courts for protection, and they have no doubt got such protection as they were entitled to. Judge Farrington, of the United States court, summed up the matter, and I prefer to give his official word rather than my own.

EARTHQUAKE DAMAGES AND INVESTMENT SINCE 1903.

Since 1903 a large sum of money raised by assessment and the sale of bonds has been expended on improvements, but how much of this expenditure was in the purchase of property for future use or for replacements, or how much was made necessary by the earthquake and fire, does not clearly appear. Neither has it been shown that complainant was entirely free from fault in permitting its feeder pipes in the lower part of the city to remain in swampy and loosely filled ground. It was in and on such ground the earthquake wrought its greatest havoc. There is unexplained and unanswered testimony tending to show not only that it was possible to have placed main feed pipes on a solid foundation, but that the chief engineer of the company, realizing the danger years before the disaster, urged the construction of a system on proper ground. It is difficult to understand why the consequences of such ill-advised location of pipe lines should be visited on the public and not on the company. There is always a certain amount of loss by accident which seems to be inseparable from the conduct of many kinds of business; it usually can be counted on in advance, and no amount of care or precaution will entirely eliminate it; it is incident to the business. Such losses are considered by the Interstate Commerce Commission in fixing rates, but the rule is never applied in favor of a carrier who has suffered loss by reason of defective appliances and facilities which he has knowingly used or provided. (New Orleans Live Stock Exchange v. T. & P. R. Co., 10 I. C. C. Rep., 327, 330.)

Therefore, in order to meet the changes which have occurred since 1903, in the absence of any testimony clearly showing that a larger amount ought to be allowed, the difference between the valuations adopted by the city engineer's office for the years 1903 and 1908 will be added to the \$26,752,500, making the value of complainant's property which is found for the purposes of this proceeding, \$27,553,512.

On the showing which has been made, there is a real and substantial controversy as to whether complainant is not justly entitled, for rate-fixing purposes, to the valuation thus fixed. A higher amount is not warranted by the testimony.

The CHAIRMAN. Is that the finding as to the total property of the company, or does it omit—

Mr. PHELAN. It omits the property that is not actually in use for water-supply purposes.

The CHAIRMAN. That \$4,000,000?

Mr. PHELAN. As I understand it, that aggregated \$3,807,000.

Senator NEWLANDS. How much would that make the total valuation, according to the judge's figures?

Mr. PHELAN. About \$31,500,000.

The CHAIRMAN. Now, it seems to me if both parties were reasonable that would be a good basis to act upon, that finding of the court.

Mr. PHELAN. In estimating the property the court assumed that up to a certain period of time, that is to say, when Judge Morrow rendered his decision, the property value had been thoroughly determined by his predecessor in the court. He did not go into the facts and figures. The estimates which have been made of the company's property have ranged from \$21,000,000 by Mr. Fitzgerald, of the Massachusetts Water Commission, to upward of \$50,000,000 by the company's engineer experts.

Senator SMOOT. Can you tell me offhand whether in the estimates of the court, making the property value \$31,500,000 in round numbers, there was included in that anything for good will or the establishment of the business?

Mr. PHELAN. I think that was eliminated by the court.

Mr. McCUTCHEON. There was nothing for that.

Senator SMOOT. That valuation was entirely without that?

Mr. PHELAN. It was thought under the decision it could not be considered for rate-fixing purposes.

Senator SMOOT. You must admit that any public utility starting a business and establishing it and getting it into working order is a very expensive thing, and therefore if that is the opinion of the court as to its real value I do not see why the city should object to that amount.

Mr. PHELAN. The city never had an opportunity of submitting any price to the people. I want to say that the city was fair in its dealings with the company. Under the charter, as advised by the city attorney, the city had to request the company to make an offer, a tender of its property at a certain price; and whereas Mr. McCutcheon has shown you certain correspondence, it nevertheless remains true that Captain Payson and even his board of directors, representing the company under ordinary circumstances, did intimate that the stockholders might agree upon \$32,000,000, but later he absolutely refused to consult the stockholders. Mr. Long, who was city attorney, and who gave testimony before the House committee, in answer to a question by the chairman, said:

Subsequent to the negotiations between the board of supervisors, or, rather, the request on the part of the board of supervisors for an offer from the Spring Valley Water Company, at the request of Supervisor Johnston, who is the chairman of the water committee of the board of supervisors, we arranged a conference at my office between the then president of the Spring Valley Water Company, Captain Payson, and one of the officers of the company, Mr. Shaw, and at that conference Supervisor Johnston, Captain Payson, Mr. Shaw, and myself were present, and we went over the situation trying to find some way by which an offer could be made to the city so that the board of supervisors could present it to the people for their approval or rejection, and the conference broke up with the decision that no binding offer could be made on the part of the company except through the stockholders; that the board of directors had no power, and Captain Payson would not commit himself as to whether the board of directors would call a meeting, so that this offer could be made.

Senator SMOOT. What was the date of that meeting?

Mr. PHELAN. Subsequent to the negotiations between the board of supervisors and the company.

Senator SMOOT. That does not give the date. You do not dispute the fact that on June 13, 1908, Captain Payson, as president of the company, made an offer, with certain limitations stated in his letter.

The CHAIRMAN. You are mistaken as to the date. That was in May.

Mr. McCUTCHEON. April 13.

The CHAIRMAN. In June Captain Payson withdrew the offer.

Senator SMOOT. I was speaking of April.

Senator HEBURN. Is there a law in California which requires stockholders to ratify the action of directors in selling property?

Mr. McCUTCHEON. Not unless it involves the sale of all the assets of a corporation and its franchises.

Mr. PHELAN. This did involve the sale of all the assets of the corporation and its franchises.

Senator SMOOT. The directors would have power to sell any portion, but not all?

Mr. PHELAN. Under the law the supervisors asked that the company give them a price, and the company replied——

The CHAIRMAN. The reply is in that letter that was read here to-day.

Mr. PHELAN. That reply was not the one I have before me. The official reply of the water company is dated September 11, 1908.

EXECUTIVE DEPARTMENT, SPRING VALLEY WATER COMPANY,
375 Sutter street, San Francisco, Cal., September 11, 1908.

To the honorable the Board of Supervisors of the City and County of San Francisco.

GENTLEMEN: We beg to acknowledge receipt of your resolution No. 505 (new series), requesting that this company submit a price at which it will sell its property to the municipality.

Before this action was taken you passed a resolution declaring that the Hetch Hetchy supply was a desirable one for San Francisco, and you declined to include the plant of this company in the property which you declared that the city should acquire.

The charter provides that before you acquire a public utility you shall solicit offers of sale of any existing utility. We regard your resolution requesting this company to submit a price as a mere formal compliance with this charter requirement.

Assuming that the resolution declaring in favor of the desirability of the Hetch Hetchy supply, in which you declined to include the property of this company, was passed by you after a full investigation, it indicates that the municipality does not want to buy the property of this company at its fair value. If, however, you do really wish to acquire its property, it is unfortunate that your action has necessarily tended to depreciate and minimize its value in the public mind. Under these circumstances the company can not be blamed for feeling satisfied that any negotiation looking to the sale of the property to the city would be fruitless, and for believing further that until your attitude undergoes a change the electors will refuse to ratify the purchase at any price which the stockholders will be willing to accept.

Conflicting statements have been made regarding the water development of which the properties of the company are capable. This is a question that vitally affects value, and therefore any proposition of sale that may be made to the municipality will be in such shape as to remove any question of fact concerning this vital issue, and to that end will fix a minimum daily delivery.

Furthermore, it has not been possible in the time fixed by your resolution to arrive at a price at which the company will guarantee a stated development from the properties now owned by it, as, for instance, the delivery of 110,000,000 gallons or more daily (equal to more than three times the present daily consumption).

It may be of interest to you to know that the company is negotiating for, and feels warranted in stating that it will obtain, an option on a Sierra water supply, and also an option for the delivery of more than 250,000,000 gallons daily from that supply into its system at Pleasanton.

This Sierra supply is supported by a perfect and unquestioned title.

Should the company make an offer, it will embrace an option to the city to include this Sierra supply in addition to the existing properties of the Spring Valley Water Company.

Respectfully,

THE BOARD OF DIRECTORS OF THE
SPRING VALLEY WATER COMPANY,
By J. M. DUKE, Secretary.

In other words, instead of giving a price on their property, they say, "We will offer you another piece of property," whereas the law is explicit that the city engineer and the board of public works shall, after an investigation of water supplies and the preparation of plans, inform the board of supervisors; and that is the only basis upon which the board of supervisors can propose to the people the acquisition of that public utility, and then the board of supervisors are required to ask the existing utilities to submit a price.

The CHAIRMAN. You need not spend any time on that. That was only an evasion.

Mr. PHELAN. I accept the judgment of the chairman. The main point before the committee, I take it, is this, that it must be conceded that San Francisco and the bay cities, aggregating now 800,000 population, are entitled to consideration at the hands of Congress, not only on account of this numerous population, but because San Francisco is a city of great federal importance.

We have diligently for more than thirty years—since 1875—gone out into the fields seeking a water supply, knowing that the sea by supply would ultimately be exhausted, and now we claim we have reached the point of exhaustion. These gentlemen say they can develop 109,000,000 gallons in the Calaveras watershed, which is on the other side of the bay from San Francisco. We can show you through our city engineer that whereas they own in part that watershed there is another company that owns above that property, namely, the Bay Cities Water Company. There is very grave doubt whether they can find a foundation for a dam there, and there is a certainty that the people of that district will enjoin the company, as they did in the adjoining county of Santa Clara, from using any of the subterranean waters, or, indeed, any of the waters which go into the gravel beds, upon which they depend practically for the fertility of the soil. A very prominent member of the California bar, Mr. Warren Olney, who appeared before the House committee, cited the decisions of the courts in Santa Clara County, all of which pointed inevitably to the fact that that water can not be had without trespassing upon the rights of the farmers; that the land would be rendered sterile by the diversion of the subterranean waters or the surface flow which feeds the gravel beds of the region.

Senator NEWLANDS. I understand your contention to be that the construction of a dam with the necessary foundation going way down would cut off the subterranean supply of those agricultural lands on the shores of the bay beyond, and very seriously affect their value, and that the owners of those lands have a right to enjoin that kind of a reservoir.

Mr. PHELAN. I can read Mr. Olney's statement before the Committee on Public Lands of the House.

The CHAIRMAN. That will be incorporated into our record.

Mr. PHELAN. Assuming that that amount of water could be developed there, still if we undertook to develop it, we would meet not only physical objections but legal objections of the most serious nature. I will not refer to the possibility of that water being contaminated, because it is a nearby supply, and as the city is developing and extending, and as the Oakland side of the bay is growing, ultimately those hills will be peopled. Even to-day there are cattle on those ridges. The watershed can not be entirely protected, and Mr.

Manson has testified that he discovered dead cattle on the range there. This being a nearby supply, and close to hundreds and thousands of people living in Santa Clara and Alameda counties, it would be plainly impracticable, as a source of water supply for the city, becoming more and more so with the growth of the population.

Senator SMOOT. Is this the only place the city can develop an additional water supply.

Mr. PHELAN. That is all.

Senator SMOOT. Mr. Schussler, you made a statement here that the water supply of the present company could be developed to 135,000,000 gallons per day.

Mr. SCHUSSLER. Yes, including the coast streams.

Senator SMOOT. You have 35,000,000 gallons a day. That would be an increase of 100,000,000 gallons?

Mr. SCHUSSLER. Yes.

Senator SMOOT. Where is that increase to come from?

Mr. SCHUSSLER. We can supply 75,000,000 gallons additional from the Alameda Creek system, from which we now get 14,000,000 gallons.

Senator SMOOT. 75,000,000 gallons additional?

Mr. SCHUSSLER. Yes.

Mr. PHELAN. You are aware that suits have been brought to restrain you from the use of that water?

Mr. SCHUSSLER. Not from reservoir water. You are mixing subterranean water with reservoir water.

Mr. PHELAN. I am referring to Alameda Creek. You know suits have been brought?

Mr. SCHUSSLER. Yes; but not from the reservoir water.

Senator NEWLANDS. Will the construction of the reservoir or dam, as Mr. Phelan describes it, on Alameda Creek, interfere with the subterranean flow of the waters to these agricultural lands below on the bay?

Mr. SCHUSSLER. Not at all, because we have for over seven years taken that very subterranean water which flows from underneath the Sunol Valley, and we are using it.

Senator SMOOT. This will be simply a dam to store this additional water?

Mr. McCUTCHEON. Storm water.

Senator NEWLANDS. Are those lands entirely supplied with their subterranean waters from the reservoir site you have in contemplation and the watershed tributary to it?

Mr. SCHUSSLER. No, sir; there is a great big additional watershed. It is the northerly portion of the watershed of Alameda Creek which we do not touch by storage reservoirs. There are altogether 600 square miles of watershed of the Alameda Creek system, of which we propose for Calaveras reservoir to take 101 square miles and 36 additional adjoining square miles; but of that water we are using now the subterranean water.

Senator NEWLANDS. You are using it now?

Mr. SCHUSSLER. Yes.

Senator NEWLANDS. And you propose hereafter to put up a dam?

Mr. SCHUSSLER. In order to store the winter water, which runs now to waste in the bay.

Senator NEWLANDS. Out of the whole 600 square miles you only propose to utilize 137 square miles for you Calaveras reservoir?

Mr. SCHUSSLER. For the Calaveras system.

Senator NEWLANDS. For the Calaveras system, which you say will supply 75,000,000 gallons daily?

Mr. SCHUSSLER. Not from Calaveras alone. In addition to that we own the San Antonio reservoir site, of which we also now use the subterranean water that may flow from it and have been——

Senator NEWLANDS. Now, let me make it clear. Confine yourself to Calaveras alone. From that system how many gallons per day do you expect to get?

Mr. SCHUSSLER. We have stated it at 30,000,000 a day, by storing the flood waters.

Senator NEWLANDS. In addition to what you have now?

Mr. SCHUSSLER. Yes.

Senator NEWLANDS. And you get 14,000,000 gallons now?

Mr. SCHUSSLER. Yes; but we know now we can get more from Calaveras, because the gauging of the streams, which has been carried on carefully for the last four years, has shown that the Calaveras will produce more than 30,000,000 a day, with its adjoining watershed.

Senator NEWLANDS. Now, I want to ask you whether the dam that is necessary for that reservoir will cut off the water that comes from that entire 600 miles of watershed, or whether it will cut off only the waters that come from 136 square miles.

Mr. SCHUSSLER. One hundred and thirty-seven square miles.

Senator NEWLANDS. So that the balance of the watershed would furnish the subterranean waters for the lands you refer to?

Mr. SCHUSSLER. Yes.

Senator NEWLANDS. Would it be sufficient for that purpose?

Mr. SCHUSSLER. Yes; because about 95 per cent of the total run-off of that watershed now goes to waste. Only about 25,000,000 gallons soak into the ground, into this so-called Niles Delta, on which I heard that Mr. Olney, the former mayor of Oakland, had proposed to build a pumping plant to take the water away in order to supply Oakland.

Senator SMOOT. I thank you. I do not want to break in any further than to find out what I was interested about.

ADDITIONAL STATEMENT OF JAMES D. PHELAN, ESQ.

Mr. PHELAN. I was simply referring to the sufficiency of that watershed as an additional supply for San Francisco. It is exposed to all those questions. There is very little rainfall there, and in the statement of Mr. Olney it will appear that the objections are all real.

Mr. Grunsky is regarded as a great authority amongst us all. Mr. McCutcheon is acquainted with him. He was incidentally in Washington the other day on a matter connected with the Salton Sea, and he was asked to testify before the House committee. In his testimony he said this:

The CHAIRMAN. You have in detail taken up the possibilities of other sources of supply?

Mr. GRUNSKY. Yes; the question was gone into quite fully at that time, and in this pamphlet which has been submitted, entitled "Reports on the Water Supplies of San Francisco, 1900-1908," the various reports which I have made are included. There was a progress report made which reviewed the situation in general. There was another report made on the available sources. There was another report made which was devoted specifically to the Tuolumne River as a source of supply, because, by the process of elimination, as Mr. Galloway has stated, the question of the water supply and quality of water and amount of water obtainable is, as a rule, relative. It was determined that the Tuolumne was the source of supply.

That is to say, of all the Sierra supplies, of which there are many, the Tuolumne, according to Mr. Grunsky, is the source of supply.

Mr. McCUTCHEON. Did not Mr. Grunsky admit in the discussion that he had made no examination of the middle Yuba supply or any of the headwaters of those two rivers? Did he not make that admission?

Mr. PHELAN. I will come to that. If he did, I am not advised. It was probably in response to some interrogation later on in his testimony. Mr. Grunsky continued:

The need existed at the time those reports were made, in 1901 and 1902, for the acquisition of water rights in the Sierra Nevadas, because the city must go to the Sierras for its water supply, and it is the result of the refusal of the Secretary of the Interior to grant the rights of way as first asked for that ultimately led to this request that we now be granted the use of the lands in the Hetch Hetchy, and, of course, Lake Eleanor.

* * * * *

I do not know whether that statement, which was given in a paper which I read before a technical society, has been correctly understood by this committee, and perhaps it needs a little explanation, because the sources of a supply that lie near San Francisco, if developed to their utmost by adequate works, and if the water could be made available for use in San Francisco, might be developed to the extent it has been indicated, but there are qualifying conditions. The development is an aggregate development. The water is wanted by other people besides San Francisco. There is no assurance that the rights to these possible sources, the control of which is claimed by the Spring Valley Water Company, or a large interest, at least, is claimed by them, and on which they have secured footholds to a greater or less extent, can be made available for that purpose. Moreover, even if it were so that the city of San Francisco were to-day the successor of the Spring Valley Water Company, and could develop those sources, San Francisco would still be before you and say, "We need what we are asking for, the use of the lands in the Hetch Hetchy." That is the situation in brief, and there is no escape from it whatever, no matter what other sources of supply may be available. If San Francisco were driven to it, rather than give up her homes, she would distill water from the ocean, get water from somewhere up to the value of her property. She would go to that expense to save herself.

The CHAIRMAN. Mr. Phelan, have you looked into this case from what has recently appeared in it? I see indications that this company has been at work getting options on outside water supplies. Do you know how extensively they have gone into that matter, to get options on these other Sierra water supplies?

Mr. PHELAN. The only intimation we have is in the correspondence I read to you, that when the company got ready to make a price they would include an option on a certain Sierra water supply. It now develops it was the Yuba River. They did not vouchsafe that information at the time; otherwise we could have investigated it in the field. Mr. Manson will tell you presently more particularly what he knows about that subject. Mr. Galloway, civil engineer, writing of this subject in the Engineering News, says:

Yuba River.—The reservoirs of the South Fork are owned by the California Gas and Electric Corporation. They have five power plants, at Alta, Deer Creek, Nevada City, Auburn, and Newcastle. They also supply water to the mines of Nevada City and Grass Valley and irrigation in the fruit districts of Auburn and Newcastle.

The Middle Fork Reservoir sites are owned by the president of the Spring Valley Water Company.

The North Fork waters are used by the California Gas and Electric Corporation's 20,000-horsepower plant at Colgate and also by the Browns Valley irrigation district. No reservoir sites are used.

Senator SMOOT. Don't you think Mr. Grunsky begged the question a little when he stated that he had no reference whatever to the water supply affecting San Francisco alone, as other parties were interested

in that increase, when you take into consideration the wording of his remarks? He says:

Reported last August that the present nearby water supply of San Francisco could be increased to yield 109,000,000 gallons a day, and also that San Francisco would not be using nearly that amount of water in 1950, or more than forty years hence.

Now, don't you think he rather begs the question in his answer?

Mr. PHELAN. You are reading from his article?

Senator SMOOT. An article that appeared in the Journal of the Society of Engineers, of September, 1908.

Mr. PHELAN. This statement was made the other day, and, as I informed the committee, he qualifies his article read before the Technical Society. He states that the Spring Valley claim certain things of which there is grave doubt, as I explained to you, not only in relation to physical objections, but legal objections which might embarrass them in developing a further water supply. Mr. Grunsky indicates there, I see, that whereas San Francisco, with a population of 400,000, might get along for a very considerable time with a less volume of water than that to be developed in the Sierras, still he enlarges it here by saying that the Bay of San Francisco, with 800,000 and more population, will need the Sierra supply. Do you claim that is begging the question? That is simply giving further information.

Senator SMOOT. He referred to this article.

Senator HEYBURN. You say one of those properties upon which the water company was said to have an option was the Yuba River.

Mr. PHELAN. That was the source to which Mr. McCutcheon referred to-day.

Mr. McCUTCHEON. The middle and south Yuba.

Senator HEYBURN. That is nearer to San Francisco than Hetch Hetchy?

Mr. PHELAN. The middle and south Yuba.

Mr. McCUTCHEON. I said it was stated that that was 40 miles more distant, but I do not think that statement is correct. I don't think it is more than 20 miles.

Senator HEYBURN. It appears on the map to be about the same.

Mr. PHELAN. All these other sources are in actual beneficial use for furnishing mining power or for irrigation; and whereas we concede that there is abundant water in the mountains, that water is now being beneficially used, and in order to acquire it we would have to make a large expenditure of money or appeal to the courts under power of eminent domain and acquire the property by taking it away from unwilling owners. What the beneficiaries of those supplies would do for power or mining or agriculture I do not know. Suffice it to say that they are beneficially using these waters, and it would be a hardship on some one to take them away from them for a superior use.

There are millions of gallons of water running to waste in the Sierras, because we have no means of impounding them. They are storm waters that we are talking about, which plow up our valleys without asking leave, and which have caused tremendous loss in California within the last six weeks, inflicting millions of dollars of damage. If we could impound those waters to that extent we would diminish the damage to the valleys of California. Those waters are running away, and the only question for the water supply of San

Francisco is to find a dam site, a reservoir site, to impound those waters. We have found it in the Hetch Hetchy Valley. Now, it is unfortunate that there are many good people who regard that valley as a unique beauty spot. It is not unique. It is a little Yosemite, I grant you, and the Yosemite itself only 20 miles away is far grander and more impressive. The tourist and the traveler can gratify himself to the utmost, so far as scenic beauty is concerned, by going to the Yosemite, where tourists have been going all these years, and which recently has been made accessible by a railroad. So we are not taking away from the public domain any unique scenic features. Those who prefer to camp in the mountains will be free to camp. They are now under regulations, self-imposed by the Sierra Club, superimposed if you please, by the United States Army, which patrols that region. They must be cleanly in their habits, and the great Tuolumne Meadows, which is regarded by these mountain climbers as a most desirable place to camp, is 20 miles from the dam site. Between that and the dam site is a mountain gorge, through which the Tuolumne River flows in a tumultuous torrent, and any possible contamination of the meadows would be overcome in that 20 miles, if indeed it were considered desirable to allow these people to camp there.

The CHAIRMAN. Couldn't you get along if you got the Lake Eleanor site, with such other water as you could pick up on the way between there and San Francisco? That would give you 60,000,000 gallons, or more than 24,000,000 gallons more than pipe capacity of the present water supply.

Mr. PHELAN. Lake Eleanor is estimated to supply us, when impounded, 60,000,000 gallons of water a day. We are now consuming over 32,000,000 gallons of water a day, without supplying any of the nearby cities, which have a population aggregating as many as our own in San Francisco. So, if we went to those mountains at an expense of \$40,000,000, \$50,000,000, or \$60,000,000 to bring in 60,000,000 gallons of water, it would not pay us, nor would it meet our wants nor the wants of the people living around San Francisco Bay. Possibly we might pick up water on the way. I do not know where it is. The Stanislaus River has been mentioned. Mr. Galloway in this same article in the Engineering News says:

Stanislaus River.—The South Fork water is used by the Tuolumne Water and Power Company in the mines around Sonora and in the power plant near Sonora. The same company owns and uses the reservoirs, the dams to which were built in the early mining days. It is a small stream.

The middle and principal fork is used by the Stanislaus Electric Power Company, which has a power plant of 40,000 horsepower. The company owns the rights to Donnels Flat, Kennedy Lake, Kennedy Meadows, and Relief Valley. A dam 200 feet high is being constructed at Relief Valley, and others are contemplated.

The North Fork is used by the Utica Mine Company. Its power plant is near Murphys. It has a reservoir, known as "Highland Reservoir," at the only important site.

Mr. McCUTCHEON. You would not suggest that the water of that Middle Fork is "consumed" by anybody, as if it was used for irrigation?

Mr. PHELAN. The Middle Fork is used by the Stanislaus Electric Power Company for the creation of electric power.

Mr. McCUTCHEON. Simply for that, and runs back into the stream.

Mr. PHELAN. It was suggested that the water that flowed back through the tailrace could be used by the city for a water supply. I think possibly it could be used, if it were fit for use, by an arrange-

ment with the company; but there is no way that we could file upon it. It belongs to the company, because they impound it. However, that is a legal question.

Senator SMOOT. We had the same question at home, in my State.

Mr. PHELAN. Our mining laws are different from yours. It was stated in the House committee by Mr. Mondell that the water laws of California were outrageous. The early appropriator gets all the water, and those who come afterwards are not protected.

Senator SMOOT. No water in any State can be owned without use. Use is the only thing that gives the right to any person to water.

Senator HEYBURN. And while being used.

Mr. McCUTCHEON. And that is the law of California.

Mr. PHELAN. I should like to know whether we can go into the tailrace of the Stanislaus dam and appropriate that water, after that company had spent millions of dollars in the impounding of the water? I know they have spent \$6,000,000. They were financed by the Knickerbocker Trust Company. Could we go in and take it after it has served the uses of power?

Mr. McCUTCHEON. After it gets back into the stream, every drop of it, beyond the shadow of a doubt.

Senator SMOOT. I do not think there is any question about that.

Mr. PHELAN. Then they have nothing for sale at all, and we can go and take that water?

Mr. McCUTCHEON. Beyond the shadow of a doubt, when that water gets back into the stream it becomes public property again, and it is the policy of the State to encourage its use.

Mr. MANSON. Being the personal property of the company which developed it, can it not be diverted before it goes into the stream, provided no prescriptive title by long use comes in?

Mr. McCUTCHEON. Yes; beyond any doubt; but that is not the fact. That suppositious case is all aside from the question here, because there is no foundation for it.

Mr. PHELAN. The company can then decide whether to turn it back into the stream or not.

Mr. McCUTCHEON. What are they going to do with it? They are not going to pump it over the mountains simply for the pleasure of seeing it go there.

Mr. PHELAN. They might possibly, in the same spirit in which you come here, on your own confession, divert that water from the dam and sell it to other cities. We certainly could not go ahead and use their dam in any way. We could only take it up under low pressure in the stream.

Mr. McCUTCHEON. I am credibly informed that it appeared before the Secretary of the Interior when this matter was on hearing that the Stanislaus Company had offered that water to the city of San Francisco and the city of San Francisco had refused to entertain the offer.

Senator DIXON. For how much?

Mr. McCUTCHEON. I do not know.

Mr. MANSON. I should like to know when that was done, because I did not know of it.

Mr. McCUTCHEON. Was there not some such showing? I am credibly informed that it was shown before the Secretary of the Interior.

Senator SMOOT. You are the city engineer of San Francisco?

Mr. MANSON. Yes.

Senator SMOOT. Is it possible to have, below the tailrace of this electric company, a reservoir sufficient to reservoir the water for the city of San Francisco?

Mr. MANSON. No; there is no reservoir site there.

Senator SMOOT. Below where it leaves the tailrace?

Mr. MANSON. No, sir.

The CHAIRMAN. You can see how impossible it would be to pipe into the stream without some kind of a reservoir.

Senator SMOOT. That is the reason I asked whether there was a reservoir site. I have no hesitation in saying that the city can reservoir the water, but if there is no place for a reservoir, that is a different question.

The CHAIRMAN. Then they would be remitted to the open river, and they can not do that.

Mr. MANSON. The minute you turn it into the stream it is subject to all the contamination of that stream. Furthermore, the company turns out the low-water discharge of the river, uses it for power, and turns it back into the stream, where there are irrigators below, and the riparian rights of the settlers below would be involved.

Mr. McCUTCHEON. Does the riparian right attach to this water which you propose to take from Hetch Hetchy?

Mr. MANSON. No, sir; we propose to store it.

Mr. McCUTCHEON. Is not that riparian right on the same plane, so far as this water is concerned?

Mr. MANSON. No, sir.

Mr. McCUTCHEON. Do you state that to the committee?

Mr. MANSON. They turn out the low-water discharge of that river, and to the low-water discharge the riparian right does attach. We do not propose to turn out the low-water discharge at all——

Mr. McCUTCHEON. Do you undertake to say to the committee that what you call the high-water discharge does not attach to riparian ownership?

Mr. MANSON. I do.

Mr. McCUTCHEON. You would better read the decisions of the courts of California on that subject.

Mr. MANSON. The supreme court has decided three different ways on that question.

Mr. McCUTCHEON. They have decided it within sixty days. There is no question about it.

Senator FLINT. I do not think a discussion between an engineer and a lawyer on a legal question is profitable.

Senator NEWLANDS. Mr. Phelan, you have spoken with great force about the importance of storing water in this Hetch Hetchy Reservoir; that without the use of this reservoir you can not restrain those flood waters that rush down into the San Joaquin River and impede navigation and overflow the banks and destroy property, and so forth. Now, right there the suggestion comes to me that we have organized a National Conservation Commission, of which the chairman and Senator Smoot and Senator Flint and myself are members, and the question of developing inland waterways is before that commission. It is also before the Inland Waterways Commission, which was organized by the President as adviser to him. Now, one of the purposes of that commission, and I presume in some shape it

will take statutory form, is to study all these questions in their relation to each other; to take rivers, like the Sacramento River and the San Joaquin River, and all the tributaries, and then study those rivers from their sources down, so as to put the waters to their highest use, for one thing; so as to prevent destruction of property, for another; so as to promote navigation, for another; so as to drain and reclaim swamp lands, for another. Now, it does seem to me that this is simply one feature of that great study relating to the San Joaquin and the Sacramento, and that the United States Government, in some form, ought to take up that subject, either through the Corps of Engineers of the army or through some such commission.

Mr. PHELAN. That would fortify our position, would it not?

Senator NEWLANDS. It might, and I am sure the finding of a commission of that kind would have great weight; but the question in my mind is whether Congress should take up just one particular feature of a great system. I hope this thing will be entered into comprehensively within the next year. A lot of us have been urging it, and I think Congress sees the wisdom of it.

Senator FLINT. What evidence have you of Congress seeing the wisdom of it?

Senator NEWLANDS. I must say the external evidence is rather discouraging, and consists thus far in the obstructive methods of three or four Senators. Now, of course the whole country is interested in Hetch Hetchy as a great scenic wonder. If this scenic wonder can be preserved, they want it; but they all admit human life and necessity are of more importance than the love of the beautiful simply; but do you not think this thing ought to be studied in some such comprehensive way by either the Corps of Engineers or by the conservation commission, or by the Inland Waterway Commission?

Senator FLINT. You might say that the chairman of the conservation commission recommended that this very contract be entered into.

Senator NEWLANDS. Mr. Pinchot is a gentleman whose opinion would have great weight with that commission, and deservedly so, but he is not the entire commission.

Mr. PHELAN. In the federal service there are many distinguished men; Mr. Walcott of the Geological Survey, Mr. J. B. Lippincott, who for years was in the field in California, and Mr. Pinchot, who have all agreed as to the wisdom and propriety of making this grant to the city of San Francisco.

Senator SMOOT. Was Mr. Pinchot ever there?

Mr. PHELAN. I do not know.

Senator NEWLANDS. No.

Senator SMOOT. Was Mr. Garfield ever there?

Mr. PHELAN. He was in the Yosemite Valley.

Miss MONROE. He was never in Hetch Hetchy.

Mr. PHELAN. Mr. J. B. Lippincott wrote a very strong communication indorsing Hetch Hetchy, and he is very familiar with all the reservoir sites in the mountains, and he claims it is very suitable for water purposes for the city of San Francisco; that this one had been surveyed by the Government for a reservoir; that it was open to the applications of power companies and municipalities, and that the preference should be given to the municipalities. It is now within

the power of the Secretary of the Interior to grant this, in case San Francisco does not use it, to a private power company, or, for that matter, to a private individual. It is one of the great reservoir sites of the mountains, and as to scenic features, John Muir himself admits that it is one of about twelve Yosemite. There are 800 miles up and down the Sierra Nevada Mountains, and Kings River Canyon is finer than either Yosemite or Hetch Hetchy.

Mr. SAMPSON. Mr. Muir says distinctly that this is second only to the Yosemite.

Mr. PHELAN. Mr. Muir is a gentleman who is very familiar with the mountains, and he began his career there as an operator in a sawmill. Verily "the lover of the tree destroyeth the tree."

Mr. SAMPSON. And then made himself a place absolutely in the first rank in American letters. It is all the more honor to him that he started from an humble origin and achieved great distinction; he was a college graduate—

Mr. PHELAN. I am not reflecting on him, but I refuse to believe that Mr. Muir's opinion is controlling in this matter. He is a poetical gentleman. I am sure he would sacrifice his own family for the preservation of beauty. He considers human life very cheap, and he considers the works of God superior in his judgment. I remember very well that John Hay, the late Secretary of State, in discussing this thing—you will pardon me for quoting a little poetry here, because we were regaled with poetry the other day, and very graceful poetry it was. When a little child, in little breeches, was lost, and the angels were invoked to save him, and ultimately he was brought back by the angels, in the judgment of those people—

To save the life of a little child and bring it back to its own
Is a darn sight better business than loafin' round the Throne.

Now, these nature lovers are loafing round the Throne of Almighty God in the high Sierras, and we are pleading here for the little children in the streets of San Francisco, Oakland, Berkeley, and Alameda. We are pleading for a reduction of the death rate. We are pleading for a supply of an absolutely essential necessity of life, for a water supply for these people. We have found Hetch Hetchy to be a desirable place from which to get it, and in getting it we simply convert a meadow into a lake; and it is conceded on all sides that a lake of crystal pure water would indeed be a unique feature in the Yosemite, whereas a meadow is not, and we would in no way interfere with the walls of the valley which rise perpendicularly several thousand feet. The waters fall from the high walls, and they would fall to a point about 100 feet above the lake, which would add immensely to the scenic effect. The only objection I can see, looking disinterestedly upon this, is that there is the fear of contamination of the watershed. That is negligible for the reason, as I told you, that the Tuolumne meadows are at least 20 miles away, separated by a turbulent gorge of water.

Senator SMOOT. Twenty miles in length, but still the whole river runs through the whole valley for 20 miles, and the watershed that would go into this reservoir gathers water from all that 20 miles, doesn't it?

Mr. PHELAN. It is all of granitic formation. There is no place to camp in those great mountainous heights which are inaccessible to human beings, except through three months in the year. There is no

possibility of human life being maintained there the year round, and therefore we call them uninhabitable. But during those three months in the year people can go into the mountains, and after they go away, after they have regarded those superb mountain chains and valleys where every prospect pleases and only man is vile, why the charitable snows and frosts of winter wipe out the contamination which these nature lovers leave behind them. Hence, that water supply will be secure against contamination, for that and for other reasons. And I am sure under regulations such as the army now imposes and such as the Sierra Club has self-imposed, there is very little danger of contamination of our water supply. Hence, we are only holding back from a great population a natural reservoir without, I believe, serving in any respect the cause of duty. Duty and utility it seems to me here go hand in hand, and that is the judgment of the best Californians, who love their State and would not sacrifice a foot of its domain. They regard its scenic wonders as a great asset from their esthetic interest in it.

The legislature of California has petitioned you unanimously to make the exchange, just as the cities of Oakland, Alameda, and Berkeley have done through their municipal authorities. This is not the scheme of any man. There is nobody interested in it in any financial way. We are not here, like the gentlemen on the other side, for the protection of a selfish interest, nor are we pleading for the destruction of the Spring Valley property, which we are willing to buy; and I regret exceedingly that they should come here in that spirit, raking up the dead past for the purpose of creating in the minds of this committee a prejudice against your petitioner, the city of San Francisco. The city of San Francisco was quite willing to buy this supply, and it is our supply. Our interests are indisputably linked. We must look to them for water, as we have in the past, for ten years to come. We provide the means by which they live, in the rates which are paid them. We pay their taxes and it would be absurd for us to impose burdens upon them.

Our interests are mutual, and their only complaint is that they did not make a sufficient rate of interest at the water rates during all those years. It is exceedingly difficult to tell what a water rate will yield, and I know in my time it was the purpose of the board of supervisors to allow 5 per cent on the value of their property, as determined by the city's experts and they determined the value, not of all the property owned by the company (and there is the weakness in their case), but the property that is actually used in supplying the city with water. The company own this Calaveras watershed, for which they paid a million dollars thirty years ago, and they ask the city to pay interest upon that when it is not used for the purpose of supplying the city or supplying anybody else with water. It was held there in order to prevent the city from acquiring it at that time, if the city desired to purchase it. So when I say the city allowed them and intends to allow them 5 per cent net, after allowing taxes and operating expenses—5 per cent net on the actual value of the property—I refer to the actual value of the property that is engaged in supplying water to the city of San Francisco, and not their properties that they hold outside of that purpose. So when you examine it carefully, I say that the city sincerely desires to give them a 5 per cent interest upon their property, and if they fail it may be on account of the failure of the rates.

Of course I am not here for the purpose of depreciating the value of the property of the Spring Valley Water Company. I can not see how it enters into consideration here. It would probably be construed in a spirit of resentment if I should attack the value of this property. But I think this committee is entitled to at least this much information. It is one of the secrets of San Francisco that we had an earthquake there on the 18th of April, 1906. The engineer of the Spring Valley Water Company, Mr. Schussler, who has been with them so long, wrote a book on the water supply of San Francisco before, during, and after the earthquake. The book was dedicated to the hydraulic engineers of America, by Herman Schussler, chief engineer, in which he shows how badly wrecked this property was, and he shows you here in a map how the fault line, that fatal fault line, runs through the entire peninsula supply of this company, right through the reservoirs, called the Pilarcitos, San Andres, and Crystal Springs, and then it runs into the Pacific Ocean, and San Francisco is left 6 miles away from the fault line. Where that fault line ran, there was the greatest destruction of property.

Mr. McCUTCHEON. Did it destroy any of the reservoirs?

Mr. PHELAN. It wrecked the company's pipes, and you will see illustrations of them and of the injury that was done to that system. Now, that is the water supply upon which San Francisco, confessedly an earthquake country, must depend for its water, and an earthquake of a little greater intensity might do a great deal more damage. So you will see the necessity of going to the mountains to have also an independent supply, because the effects of the earthquake apparently were not demonstrated in the mountains or central basins of California, but here there is an earthquake fault, a visible evidence of nature's peculiar caprice, and where that fault lay, fences were 6 or 8 feet displaced, pipes broken, and destruction consequently resulted. If we had gone into the mountains years ago, we might have had a supply of water which would have saved \$500,000,000 of property; but we were dependent upon this peninsula supply, and we are the victims of our own confidence in this very excellent company.

Senator SMOOT. Are there not a good many other places where you can go besides Hetch Hetchy and get water sufficient for San Francisco?

Mr. PHELAN. All that I can answer is that our engineers have investigated all these sources, and they say that the Hetch Hetchy is the best.

Senator SMOOT. I admit that.

Mr. PHELAN. It is the most available, it does not involve us in any litigation, it is not used for beneficial purposes, and there seems to be every reason why we should use it. Of course we could take water from the Tuolumne, the Yuba, or any of those streams. I do not say that they are ample, but I will assume that there are ample supplies elsewhere, by paying for them. Now, during the wretched administration of Ruef and Schmitz a gentleman undertook to exploit the city and county of San Francisco through the board of supervisors and organized a company the corporate title of which was the Bay Cities Water Company. They had acquired for \$150,000 a supply called the Eldorado Gravel and Mining Company's supply. It was understood between the bosses and the projectors of that scheme that ten and one-half million dollars would have to be paid for the

bare rights. Now, that may be given as showing the height of the price asked for bare rights. Then, on top of that we must pay fifty or sixty million dollars to bring the water into San Francisco.

Senator SMOOT. Could you not condemn that?

Mr. PHELAN. We could; but that particular supply was of no value. I do not know what they would ask for the others, which are of some value.

Senator SMOOT. I mean the other supplies that you know of. There are none of them but what could be condemned.

Mr. PHELAN. I have no doubt they could be condemned if they were considered desirable. But the minds of the engineers centered on Tuolumne and Hetch Hetchy, and we think, San Francisco being a popular city, that she is entitled to the best. San Francisco has gone through a great disaster. It has to rehabilitate its entire municipal plant. It has to build its city hall, to rebuild its schools, its jail, its library, its auxiliary fire-protecting system, which it is doing now; its sewers, which are ruptured. It has to do everything as though it began life again. Hence the pressure upon the tax limit will be so great that we will have no money to bring in water from the mountains unless we are able to do it at the minimum of cost. That is to say, 15 per cent of the assessed value of the property of San Francisco is the limit of public indebtedness. That amounts now to \$69,000,000. When we have our sewers, our schools, our jail, our city hall, our streets, and our auxiliary water supply taken from the available bonded indebtedness of San Francisco (and the scheme now is to pipe the entire system for fire protection alone), I do not suppose we will have \$20,000,000 or \$25,000,000 left or available. With that money we will have to finance a project to bring water in, and conceding that the grants are given us, it will, in the case of Hetch Hetchy, cost us from \$40,000,000 to \$50,000,000.

Now, if on top of that we have to purchase the property of other companies which are using the water beneficially, and which should not be disturbed, it will be that much additional burden. And we want to rest our case on this: If this committee determines that by using Hetch Hetchy we do in any sense deprive the Federal Government of a great scenic wonder, if we deprive the people of reasonable freedom in using the watershed, then in that event we will say, measure that damage, which we do not concede will ensue with the advantages which would accrue to city and nation by providing the city with necessary abundant and pure water supply from that source. But if you desire to reserve a park for public purposes, for playground purposes (and I would say in parenthesis that only a hundred people went in there last year, as it is practically inaccessible, then you will drive San Francisco to the necessity of expending vast sums of money in acquiring private water rights and water privileges which it can not well afford to do, and you will at the same time deprive power companies and mining companies and irrigation companies of the use of the water which is now in beneficial use for carrying on those great industries.

It seems to me that the Government having this site, that so little damage would ensue that it would be well within the discretion of Congress to give it to its great federal city on the Pacific coast.

I said I would refer to one thing before my time was consumed, and that is a statement by Mr. McCutcheon that I have accused the

present management of the Spring Valley Water Company of being in the position of speculators. All I know of that is that a great deal of stock seemed to change hands subsequent to the fire at as low as \$19, \$21, and \$22 a share, and that it was generally known in San Francisco that the president of the company, Mr. Bourne, who is wont to speculate on the street, had acquired these shares, and it was subsequently developed to be true by his accession to the presidency of the board of directors of the company. Now, this same gentleman, in the matter of the San Francisco Gas and Electric Company, acquired somehow control, whether through his friends or whether through the acquisition of a large number of shares of stock, and became its president; and then in December, prior to the earthquake, he sold out to the present corporation, known as the California Gas and Electric, which merely goes to prove that he is not in any sense an investor. His methods are to buy and to sell, to trade, to make a turn. Now he has entered into the possession, so far as the control of the board of directors is concerned, of the Spring Valley Water Company, and I only challenge him as a speculator as opposed to an investor.

I do not possess his secrets, but I do not believe he intends to hold on and to maintain that property for interest account for 5 per cent, if you please, or 6 per cent on his investment, but that he intends to make a turn by reason of the increase in the value of the shares and the increase in the value of the bonds, for he sees that San Francisco must acquire this property, and whatever price the city does pay for it seems reasonably sure now will be more than the price it was sold for in the street, and for which it was selling at the time when, according to Judge Farrington's decision, the face value of its capital stock and bonds represented \$32,000,000, but was sold at \$21,000,000. So when I referred to Mr. Bourne as a speculator I did not consider it in an offensive sense, but I wanted the committee to know that the company is not operated in the interest of the water users of San Francisco. That community of interest seems to be strained by reason of the fact that these people own it for the purpose of making money out of it, by reason of the advance of its shares, whereas the old company for a period of more than twenty years ran on at a jog pace, supplying the city with water without the change of a quarter in the value of its shares, no speculative features being involved at all. Now this company comes here, in the hands of what I call speculators, and tries to prejudice the minds of this committee against the application of the city of San Francisco; whereas I believe it would be to their true interest, either as investors or as speculators, to help San Francisco to get this mountain supply, because we need the mountain supply, and we need the Spring Valley supply. There has never been in the minds of the officials of San Francisco, in my recollection, any idea of refusing to purchase the Spring Valley supply at a reasonable price.

Mr. McCUTCHEON. If you will have only \$20,000,000 or \$25,000,000 left, as you suggest, after you have repaired streets, built school-houses, and made other improvements, inasmuch as you have suggested that you intend to buy the Spring Valley Water Company at a fair price, how can you buy that property and also go on with Hetch Hetchy?

Mr. PHELAN. You present a very serious problem. The Spring Valley Water Company owns the reservoir sites on the peninsula.

The CHAIRMAN. I suppose your statement was based on the idea that you would go to work on all those improvements that you refer to, and after making them all you would have \$25,000,000 left. Now, some of those improvements might be postponed if you could buy the waterworks, so you would have an abundance of money.

Mr. PHELAN. Yes, that is true. Of course the water supply is the thing of first importance. If necessary, we could do without a library. If necessary, we could harbor our children in the temporary schools that are there now, erected since the fire. If necessary, we could leave our streets to decay, but we can not do without water; and this company, exposed in this peninsular position, an earthquake shock could at any time leave us without that prime necessity; so that as a mere matter of self-protection and preservation, we would have to go into the mountains. I merely refer to this as showing why this committee should not impose upon San Francisco, impoverished as it is, any unnecessary burden, which certainly would be if you forced us to go to other mountain sources and take away property from the private individuals now owning them and beneficially using them.

The CHAIRMAN. Let me ask you a question. Perhaps your engineer can answer it. Would your water supply, if piped into San Francisco from Hetch Hetchy, be safer and surer for you to use, in case of an earthquake such as you had some years ago, safer and surer, than the present system? In other words, would you be more sure of getting your water supply in the face of an earthquake like that than you would under the present system?

Mr. MANSON. Both the source and the city would be on the same side of what has been called the earthquake right of way—this fault line. The Sierras are east of us and the city is east of the fault line, so we would not have the fault line lying along between us and the water supply, as it does in some instances in the supply at present utilized. The Alameda Creek supply is also on the safe side of the fault line, so that that portion of the work would not be subject to destruction by earthquake.

Mr. McCUTCHEON. Where would you lay the conduit for bringing the water into the city in order to escape the fault line?

Mr. MANSON. If we can be permitted to carry out our desire to purchase the Spring Valley Water Company property, we would lay it along a very excellent line selected by Mr. Schussler, on the east side altogether of the fault line.

Mr. McCUTCHEON. The storage reservoirs of the Spring Valley Water Company were not at all affected by the earthquake, were they?

Mr. MANSON. No, sir.

Mr. McCUTCHEON. There was just as much water in the storage reservoirs after the earthquake as before?

Mr. MANSON. Every bit. There was no earthquake shock there at all.

The CHAIRMAN. How did that earthquake affect your pipes, your distributing system?

Mr. McCUTCHEON. It ruptured the pipe line. Mr. Schussler can explain that better than I can.

Mr. SCHUSSLER. In San Francisco, especially the lower part of the city, there are a number of old swamps, with mud from 50 to 80 feet deep. They have been loosely filled, and the streets pass right over the loose filling. We were compelled to lay the pipes underneath the pavement through those swamps. A great many of those swamps were from past generations. Nobody had any records of them. The consequence was, when the earthquake came it shook those great big bowls full of soft mud with the filling on top and the streets on top of that, the same as you would shake a flat platter of soft jelly. Whatever was under those streets broke. The city sewers broke, the gas pipes broke, the telephone lines, the water pipes, all broke, and particularly at the points where the soft portions of the streets joined the solid portions. When the shock was finally over (it lasted about fifty-two seconds) the mud crowded up, generally speaking, toward the east; that is, it shoved up toward the east and ran away from the west side. It tore off all the sewers, gas, water, and other pipes on the west side of each swamp, and it telescoped them together as much as from 8 to 10 feet on the side upon which the mud crowded up onto the solid ground. No power on earth could have prevented those breaks. On the other hand, in connection with this, I should like to state, so as not to have the impression go abroad that these are vital objections to our works (and I think Mr. Phelan might have done the graceful thing in saying that), our main, vital reservoirs, and dams were so well constructed that although the earthquake went right close by them and through one end of one of them it did not injure them.

Senator FULTON. Do you say it went through them?

Mr. SCHUSSLER. Went through the end of one and went right in front of the big dam, 145 feet high with a great big lake above it and a populous town below it, and there was no injury done. The works were well constructed, to such an extent that prior to the earthquake I was called the extravagant engineer and was called so because I built things to stay.

Senator FULTON. Called extravagant by the city?

Mr. SCHUSSLER. Yes.

Senator DIXON. How were those dams constructed so as to resist the earthquake shock?

Mr. SCHUSSLER. I was through the earthquake of 1868. I planned the big Crystal Springs dam at that time. I made up my mind that if I lived to build that big dam I would make it with joints, so that it would give a little in case of a shaking, because earthquakes run in a wave motion.

Senator FULTON. I have understood that the earth dams stood the shock better than the rock or cement. Is that true?

Mr. SCHUSSLER. The concrete dams stood it magnificently, and the earth dams stood well, because they were built of the choicest material, well packed in in thin layers and with a first-class puddle-clay core. The earthquake wave went through one end of one of the dams, and instead of tearing it off, the puddle-clay core simply bent like a flat letter "S," and the dam remained tight.

Mr. MANSON. I have personally examined every one of those dams that Mr. Schussler constructed, and there was not a scrap of harm done any one of them. The east end of one dam was right along the fault line, and the brick masonry of the waste tunnel was sheared in two as if it was so much eggshell. The pipes from the Pilarcitos

dam lay very near along the line of the fault. They were telescoped all to pieces. All the lines of pipe into the city were ruptured at one point or another. The greatest damage that was done in the city was done on the soft filling, as Mr. Schussler says. In places where two lines of pipe stood a little way apart, with a cushion of earth between them, there was no harm done to the pipes, but the ends of the pipes would frequently be ruptured.

Senator SMOOT. Mr. Phelan, you deprecated the fact that there was not better feeling between the Spring Valley Water Company and the city, and I was rather impressed with the statement made by Mr. McCutcheon this morning, and from his statement I took it that the company were rather placed in a position where they had to defend themselves; in other words, to appeal to the United States court. But from your statement I judge there are two sides to that question. Now, do you believe that the Spring Valley Water Company could have supplied water at the prices that the city of San Francisco required of them, and that they objected to, and went to the courts, and the courts sustained them in their position?

Mr. PHELAN. Yesterday I inquired as to the comparative rates between cities, to see if San Francisco was favored by the Spring Valley Water Company in the matter of rates, and I have these figures for the information of the committee:

Actual receipts per consumer per annum in 1904: Washington, \$1.25; Milwaukee, \$1.53; Baltimore, \$1.63; Buffalo, \$1.90; Chicago, \$2; New York, \$2.07; Cleveland, \$2.21; Cincinnati, \$2.61; Philadelphia, \$2.60; Pittsburg, \$2.87; St. Louis, \$3.55; Boston, \$4.01; San Francisco, \$5.21.

Mr. McCUTCHEON. That does not answer Senator Smoot's question.

Senator SMOOT. I did not want it answered in that way.

Mr. PHELAN. That shows the contributions of the different cities to the water companies.

Senator NEWLANDS. You would have to consider, however, that those waterworks are owned by the municipalities and as a rule they only get enough from their consumers to pay their operating expenses.

Senator SMOOT. And in some instances not enough to do that.

Senator NEWLANDS. But this is a private company.

Mr. PHELAN. Will you repeat the question?

Senator SMOOT. I asked you whether, in your judgment, the prices at which the city of San Francisco requires the Spring Valley Water Company to furnish water were fair and just? I refer to the prices that they objected to and went to the United States court and asked for an injunction against the action of the city.

Mr. PHELAN. They objected to the rates fixed in 1902, which I believe were on a basis of valuation of \$25,000,000. The way of determining the rate in San Francisco is to determine the value of the property and then fix a rate of interest, to which the company is entitled as compensation, and then fix rates which will yield that rate of interest. The city engineer fixed \$25,000,000 as the value of the property and gave that valuation to the board of supervisors, and that bound the supervisors.

Mr. McCUTCHEON. Will you explain just how that bound the supervisors?

Mr. PHELAN. Only that the city engineer is the professional technical adviser of the board of supervisors, and he reported \$25,000,000,

giving his data and reasons therefor, and they fixed a rate which they believed would yield 5 per cent on that. Now, if the rate failed, it was a miscalculation. I believe that the company should receive 5 per cent on the value of the property used in supplying the city, a net return of 5 per cent, after allowing them operating expenses and taxes, and that was always my advice to the board of supervisors when I presided over the city some years ago.

Senator SMOOT. What excuse did they have in deducting \$146,000 from the hydrant rate?

Mr. PHELAN. The hydrant rate was at one time \$5 a hydrant. Then they reduced it to \$2.50. Those are the hydrants in the streets, used occasionally for the extinguishment of fires, and sometimes you go to them and there is no water with which to extinguish a fire. I suppose they thought those hydrants were not worth more than \$2.50.

Mr. McCUTCHEON. Do I understand you to say seriously that was the reason?

Mr. PHELAN. I do not know the reason. I was not familiar with the reason at that time. I do not know the year when it was done.

Senator SMOOT. All I wanted to do was to find out what you thought.

Mr. PHELAN. They always estimated that the receipts would be more in the year succeeding, the year just ahead of the fixing of the rates, on account of the new accessions to the population and the number of new houses built.

Mr. SCHUSSLER. May I say one word?

Senator FLINT. We want to get through to-night.

Mr. SCHUSSLER. In all this discussion it has been said that the city does not pay for property that is not in use. Now, this company has got to buy property ahead of time in order to prevent it being settled up by farms, and especially by villages and towns. If we do not go in in time and buy up an entire valley and an entire watershed if possible, we can never get it.

Senator SMOOT. We understand that; because if you did not do that the city would have to pay upon the increased valuation. It is a benefit to both of you.

Mr. PHELAN. I wish to introduce into the record Mr. Grunsky and Mr. Galloway's letter.

SIR: A statement by Mr. Robert U. Johnson in a recent letter to you regarding the water supply of San Francisco requires some explanation. San Francisco, in an endeavor to secure water, has settled upon the Hetch Hetchy Valley, in the Yosemite National Park, lying in the Sierra Nevada Mountains, as the best place to secure and store the water. The largest portion of the valley now belongs to San Francisco, the city having purchased it from private owners. The remaining lands belong to the National Government. San Francisco also owns land outside the valley, but lying in the Yosemite Park and Forest Reserve. In granting a permit to San Francisco to use the waters and the valley as a reservoir, the Secretary of the Interior required that San Francisco exchange with the Government the lands outside the valley for those therein. To this Congress must consent, and a bill is now being considered at Washington having in view the transfer of these lands.

The use of the valley as a reservoir would convert a meadow into a lake. The project has aroused violent criticism from the local water monopoly, which will not here be considered, and from nature lovers. The protests of the latter deserve consideration because a principle is involved.

Mr. Johnson has been in the forefront of the agitation to prevent San Francisco using the Hetch Hetchy Valley. One of the principal statements made by him is that San Francisco can go elsewhere for a water supply. Mr. Johnson quotes a statement which

I made in discussing a water supply for the city before the Commonwealth Club of San Francisco to the effect that there are many sources of supply in the Sierra Nevada. By implication I reinforce in this statement the contention that it is unnecessary to use the Hetch Hetchy Valley.

I submit that it is possible to take a single statement from a given article and prove the direct opposite from the meaning shown by the context. The statement as quoted is correct. There are many sources of supply in the Sierra Nevada. There are also sources of supply available everywhere in the United States. It is a physical possibility to take the waters of the Hudson River at New York, distill them, and by pumps and pipes carry this water over 3,000 miles of mountains, plains, and deserts and supply San Francisco.

Mr. Johnson needs to be reminded of the American definition of an engineer—one who can do for one dollar what anyone can do for two. An engineer, in discussing the water supply of San Francisco, must consider the cost, otherwise discussion is as sound and fury, signifying nothing. Unlimited capital can do anything, but a municipal undertaking is as subject to economic laws as any other business.

The following discussion of the problem and of the various sources of water supply which have been considered as possibly available for San Francisco is taken from a brief prepared for another purpose:

THE REQUIREMENTS OF A SUPPLY.

The first essential, and one which must be constantly borne in mind, is that the supply of water must be at a cost which the city can pay. A charter limit is placed on the possible debt and a more effective limit is placed on the expenditure by a real inability to expend much money owing to the severe losses by the citizens in the destruction of the city by fire.

The second essential of a supply is that it must have as a vital feature a storage reservoir of large capacity. There are seven months in California every year when no rain falls. There are periods of two or more dry years when the rainfall does not fill the reservoirs. Hence the necessity of a reservoir in any use of water in California.

The third essential of a supply is that if water be obtained from the Sierra Nevada, electric power must be generated and used to lift the water over a spur of the Coast Range of mountains. Water coming from the Sierra Nevada must cross the San Joaquin Valley, 60 miles wide, the floor of which is but a little above the sea level. It then must cross the spur of the Coast Range, the highest point of which is 730 feet above sea level. The water must be pumped over this summit, and electric power, generated by the water as it falls from the high levels of the Sierra Nevada, would be used for that purpose.

THE SOURCES OF SUPPLY AND THEIR AVAILABILITY.

On the west is the Pacific Ocean. On the north are deep straits, parts of San Francisco Bay, which make it a physical impossibility to obtain any water, if such existed.

From the south the present supply is now partly obtained. A rival of the Spring Valley Water Company, the Bay Cities Water Company, did propose a supply from southeast of the city of San Jose. Immediate opposition arose from the farmers of the Santa Clara Valley. The water which it was proposed to take sinks into gravel beds under the farming lands and makes the lands fertile. The farmers instituted suits in court and the water company was enjoined from taking the water even in the flood season. The project was then dropped.

A source of supply is proposed by the Spring Valley Water Company from the Coast Range across the bay and east of San Francisco. This is generally referred to as the Calaveras supply on Alameda Creek. About 40 per cent of the present supply of San Francisco is now taken from this creek by the Spring Valley Water Company. It is obtained from wells in the gravel beds at Sunol. The proposed plan is to build storage reservoirs and retain the flood waters of the creek. These flood waters now largely flow into and replenish the gravel beds underlying a rich farming region. The gravel beds act as an immense reservoir of the winter floods.

The fertility of the farming lands depends upon this underground water. The removal of water as now done by the Spring Valley Water Company has taken away the permanent water and the farming lands have suffered. Suits for damages and injunction have been filed by the farmers against the water company and more are to follow. Lower down on the creek, from similar gravel beds, a portion of the water supply for Oakland and Alameda is obtained and resistance would be offered by the company supplying these cities to taking more water.

The courts of California have uniformly held that the rights of the farmers to the water under their lands is superior to any other right to take the water. It is immaterial

whether the water is pumped from the gravel-bed reservoir or restrained in winter by reservoirs in the hills. The result is the same. Instead of being able to furnish an increased supply from the Calaveras source, the Spring Valley Water Company is now fighting in court to retain the right to take what it now does and which forms a large part of its present supply. It is not a possible source of supply even for present needs, and certainly not for the future.

THE SIERRA NEVADA SOURCES.

There is abundant water in the Sierra Nevada Mountains. The snow which lies in the higher levels is an additional reservoir. Lacking any permanent source of supply in the Coast Range, available for San Francisco, engineers have turned to the Sierra Nevada. After examination, the Tuolumne River was selected as the best source, and plans made for using it. The present action is a part of that plan.

It must be understood that it is the declared intention of the representatives of the city to purchase the plant of the Spring Valley Water Company. Its distribution system is necessary and its large reservoirs near the city are required as a safety measure at the end of the long pipe from the mountains.

On the lower reaches of the Tuolumne River large irrigation districts have rights to water. These rights have been conserved and with them there is no conflict.

The discussion of Sierra waters may now turn to whether other rivers could be used. To the south lie the Merced and San Joaquin rivers. To the north lie the Stanislaus, Calaveras, Mokelumne, Cosumnes, American, Bear, and Yuba rivers, in an extent of about 150 miles. More distant streams are not considered, as being too far away. The uses and availability of the rivers named will be considered in their order from south to north. The necessary requirements as to reservoir sites and as to the possibility of generating electric power must be constantly borne in mind.

San Joaquin River.—This river has never been proposed as a source of supply. It is too far away. The water is used by the San Joaquin Power Company to supply Fresno.

Merced River.—This is the river which flows through the Yosemite Valley and is therefore not available either for storage or power. Below the valley no storage site exists. The water is used by a power company at Merced Falls, and for irrigation by a private company.

Tuolumne River.—The main stream is the proposed source of supply. The north fork, a small stream, is used by a small power company.

Stanislaus River.—The south fork water is used by the Tuolumne Water and Power Company in the mines around Sonora, and in the power plant near Sonora. The same company owns and uses the reservoirs, the dams to which were built in the early mining days. It is a small stream.

The middle and principal fork is used by the Stanislaus Electric Power Company, which has a power plant of 40,000 horsepower. The company owns the rights to Donnels Flat, Kennedy Lake, Kennedy Meadows and Relief Valley. A dam 200 feet high is being constructed at Relief Valley and others are contemplated.

The North Fork is used by the Utica Mine Company. Its power plant is near Murphys. It has a reservoir known as the "Highland Reservoir" at the only important site.

After the waters of the three forks come together they are used by the Merrills mine, near Angels Camp. They are used farther down by a small power company and after that by private irrigation companies on both sides of the river from Oakdale to Stockton.

Calaveras River.—This stream does not rise in the higher mountains. It goes entirely dry in summer and is not available as a source of supply.

Mokelumne River.—This stream has only one main branch. The south fork does not rise in the high mountains. The principal part is used by the California Gas and Electric Corporation at the 30,000-horsepower plant at Electra and by ditches which take the water to mines at Jackson and Sutter Creek. A ditch on the south side takes water to Mokelumne Hill. This company owns and uses the reservoirs at Blue Lakes, Twin Lakes, Meadow Lake and Bear Valley. It also owns the reservoir site at Deer Valley. No other reservoir sites exist on this stream.

Cosumnes River.—This river does not rise in the higher mountains. The principal reservoir sites are owned by the Bay Cities Water Company.

The American River.—On the south fork there are several small reservoir sites at Silver Lake, Medley Lake, etc. They are claimed by two companies, the Bay Cities Water Company and the American River Electric Company. The latter company uses the water at its power plant near Placerville. Other uses will be referred to later.

The Middle Fork Reservoir sites are partly controlled by the California-Nevada Electric Power Company on the Rubicon River (a branch) and by the California Gas and Electric Corporation on Silver Creek (a branch).

The North Fork is the smallest of the three, and while rising in the high mountains, has no reservoir sites.

After the waters of the three forks combine they are used first by the power plant of the State at the prison at Folsom, then by the California Gas and Electric Corporation at their Folsom power plant, and then by gold dredgers on the lower river.

Bear River.—This is a small stream which does not rise in the high mountains. It goes dry in summer and is not available as a source of supply.

Yuba River.—The reservoirs of the South Fork are owned by the California Gas and Electric Corporation. They have five power plants—at Alta, Deer Creek, Nevada City, Auburn, and Newcastle. They also supply water to the mines of Nevada City and Grass Valley and irrigation in the fruit districts of Auburn and Newcastle.

The Middle Fork reservoir sites are owned by the president of the Spring Valley Water Company.

The North Fork waters are used by the California Gas and Electric Corporation's 20,000-horsepower plant at Colgate and also by its Browns Valley plant; also by the Browns Valley irrigation district. No reservoir sites are used.

After the three forks combine the waters are used by the Marysville Gold Dredging Company, near Marysville.

Lake Tahoe has been mentioned as a possible source. Its waters flow into central Nevada. It has been considered as a source of supply, but was rejected as too far away and therefore too costly. Since then all the water has been taken for the irrigation project of the United States Reclamation Service at Fallon, Nev. It is no longer available.

The list given above covers all of the sources of supply even remotely available in a physical sense. The Tuolumne, with a reservoir at Hetch Hetchy, is the nearest stream to San Francisco. None other is available without the costly condemnation of private property. As an indication of their value, the Stanislaus River to the north has on it one company with a capitalization of \$17,250,000, and more bonds will soon be sold for extensions. There are two other companies on the same stream and two private irrigating companies.

The first development of long-distance transmission occurred in California. The value of the rivers was seen by private interests and they are all taken up. It was only by satisfying the irrigation districts on the Tuolumne that permission was given the city to use the river. No other stream exists from which San Francisco can obtain a supply which she can undertake to develop within her financial capacity.

It is urged by Mr. Johnson and others that the use of the Hetch Hetchy Valley as a lake will cut off access to the higher mountains. This is most absurd.

The valley is off the main line of travel. A few venturesome spirits go up the rocky canyon. For these roads or trails will be built around the lake, under the regulation of the Secretary of the Interior.

A second contention is that campers will be disbarred from the higher mountains of the Tuolumne drainage area to prevent contamination. The city will not ask for any more protection against campers than a submission on their part to the rules now enforced in that region by the army officers in charge.

Wild claims have been made of immense power which might be developed from the Tuolumne by the Government. All the power which can be developed will be used in pumping the water over the spur of the Coast Range. It is a problem to find sufficient drop for that purpose. The city will release from the reservoir only sufficient water for its needs in pumping. A clause in the agreement stipulates that any excess of power must be sold to the irrigation districts. In this case there will be no core to the apple.

I am informed that Mr. Johnson was of assistance in the setting aside of the Yosemite Park and Forest Reserve. It is unfortunate that those who have rendered such signal service to the people in that work can not see the harm they do to their own projects and desires. I believe none will dispute me when I state that within fifty years every reservoir site in the Sierra Nevada will be used. If San Francisco does not get the Hetch Hetchy reservoir site some one else will. The parks and the forest reserves are for use—not by the relatively few sight seekers, but by the millions who will never see them. A stupid opposition to any use will create a sentiment that will take the reserves from the Government and their destruction will follow. This reservoir site, more charming as a mountain lake than as a meadow, is needed now by nearly a million people on San Francisco Bay. In the future the population will be far greater. It is not a private enterprise for profit.

This attempt on the part of a great city to obtain pure water and the opposition which Mr. Johnson and his supporters are showing illustrates again the world-old difficulty of the many, disorganized and with opposite minds, to prevail against the organized few. The real opposition to the project comes from those who make profit of the inability of society to govern and provide for itself. A clear conception of the true merits of the case and of the real use to which Mr. Johnson's efforts are being put might cause him to modify his opinions and his course of action.

Yours, very truly,

J. D. GALLOWAY,
Member American Society Civil Engineers,
Balboa Building, San Francisco, Cal.

NEW YORK CITY, January 29, 1909.

SIR: There is apparently in the minds of many who desire that large areas of our mountain regions be preserved in their natural condition a misconception concerning the future of the drainage area above the Hetch Hetchy Valley, on the Tuolumne River, from which San Francisco proposes to divert stored water for the use of her inhabitants. The city acquires its rights to water under state laws, and has been granted by the Secretary of the Interior the right to use a dam site below Hetch Hetchy Valley. It is proposed to erect a dam in the course of time which will submerge the valley floor. About 1,200 acres will be flooded, of which about one-half is now meadow land. This meadow land is now in private ownership, and it is understood that San Francisco has contracted for its purchase. The drainage area above the Hetch Hetchy Valley from which streams flow either directly into the valley or into the Tuolumne, which courses through the valley, extends to the summit of the Sierra Nevada. It has an area of about 450 square miles, or over 280,000 acres. This drainage area has an altitude, near the valley, of 5,000 to 7,000 feet and rises toward the summit of the range, where peaks along the crest rise to heights of over 11,000 feet. In this area, above the valley, San Francisco has asked for no rights and does not propose to ask for any restriction of use, except such as will forever conserve this area free from such activities as might prove a menace to water supply. Sight-seeing and camping will not be prohibited. There will be routes of travel through this area open to lovers of mountain scenery. The higher mountains will remain accessible as at present. The utilization of the storage sites, which San Francisco has asked for, and to which she is now entitled (Congress being merely asked to make the permit, instead of revocable, a permanent right to use for the stated purpose), should be favored by all who are earnest in their desire to conserve the higher mountain areas on the Tuolumne River as a pleasure ground for the people. It should be accepted as a certainty that the Hetch Hetchy Valley will some day be converted into a lake; if not by San Francisco, then by irrigation districts or by power companies. The water, if stored for other than domestic uses, may not require the protection which can be given to it if its drainage remains in a forest reserve. The outlines of the reserve are subject to change at the pleasure of Congress. They have already been modified since the reservation was first made. The best protection that can come to this region will result from the use of the water for the highest purpose to which it can be put, domestic use for a large and rapidly growing community.

The availability of other mountain sources of water to supply the needs of San Francisco is relative. The Tuolumne is the most available and will afford the best water. It will not do to say that San Francisco should be content with the water that can be developed from near-by sources. If it were possible to make these available to their limit through the established private water company, which is the active agent in the antagonism to San Francisco's request, or to make them available by purchase of the properties of this water company and of other rights and properties, it would still be necessary for San Francisco to utilize the mountain source.

The impression should also be corrected that the Hetch Hetchy Valley is in any way connected with the Yosemite Valley. It lies on a different river. It is distant therefrom a long day's journey by road and trail. The forest reserve is called a national park by courtesy only. But the name Yosemite National Park has sometimes been used, even in official documents, to designate the forest reserve, and it is probably due to this fact that the impression has gone abroad that San Francisco proposes to impair the beauties of the Yosemite, which is in no sense the case.

It remains to be stated that San Francisco has taken no steps to enter upon the development of the power that might be generated with the stored water as it flows from the proposed reservoirs down the natural channels of the river and its tributaries from an

elevation of 3,700 feet at Hetch Hetchy and from 4,700 feet at Lake Eleanor to the proposed point of diversion from the river at an elevation of about 2,200 feet. The water-supply project, however, involves the development of some power lower down along the line of the conduit, but this is intended for use in pumping the city water over the summit of the Coast Range at Altamont. There is no such value in the water power as indicated in the statements of some of those who are opposing San Francisco, as anyone can learn by investigating the bitter experience of some of the power companies that have made developments in the Sierra Nevada.

Whether or not Congress grants to San Francisco what she has asked for—the privilege of exchanging good meadow land in one part of the reserve for marginal land at the Hetch Hetchy, including lands on which the dam is located—the right to proceed with the water development remains, and the development, being a reasonable and wise proposition for the benefit of a large and growing community, will undoubtedly be made.

C. E. GRUNSKY,

45 Broadway, New York City.

FEBRUARY 1, 1909.

**STATEMENT OF MARSDEN MANSON, ESQ., OF SAN FRANCISCO,
CAL.**

Mr. MANSON. Realizing the immense advantages that accrue from getting these water supplies ahead of time, the city of San Francisco appears before this committee to-day. We realize that the present supplies are developed very nearly, if not quite, to our present demands. When you consider the matter of money alone, there are available quite a number of sites and a number of sources, probably more than a dozen. That was all fully realized by Mr. Grunsky in his examination, and in the city engineer's report, which you have before you, you have a general review of all the possible sources from which San Francisco can derive its water supply, and also his reasons for eliminating first one and then another and selecting one that is open to us under the laws of this Congress.

Senator SMOOT. Do you know about how much additional cost it would be to the city of San Francisco to develop any of these dozen other systems—I mean offhand? Can you state it?

Mr. MANSON. I can only agree with Mr. McCutcheon on that, when he says that nobody undertakes to say the cost.

Senator FULTON. The comparative cost.

Senator SMOOT. What would be your judgment as to the comparative cost?

Mr. MANSON. My judgment would be, if we were to undertake to buy the nearest supplies, especially if the city should undertake to do it, that there would be innumerable suits by corporations, by municipalities, and by the owners of land on the opposite side of the bay, on the ground that the lowering and storing of the water in the Calaveras reservoir sites would deprive the Niles cone, the lands of the Livermore Valley, and the extremely valuable near-by lands of their present natural source of water and lower the plane of that water, and that we would be in the same position that the Bay Cities Water Company was when they undertook to cut off the water supply from the Coyote Creek in the head of the Santa Clara Valley, when they were stopped after putting in a very expensive system, modeled somewhat after the very excellent plans prepared for developing a portion of the Alameda site. They were perpetually enjoined, and have never run one single pump stroke to draw that water off

from that region. Why? Because that would tend to lower the plane of low water. That has been the case over in the Alameda site, that the plane is being lowered.

Senator SMOOT. That is not the question.

Mr. MANSON. Mr. Schussler has gotten up a method of bringing that water to the surface and has developed it, and I suppose the company have a right to the amount they now develop and divert; but the question is, what would it cost—and I say it would be prohibitive to San Francisco; and if San Francisco to-day should purchase the Calaveras system, along with the balance of the Spring Valley Water Company's property, I, as its engineer, certainly would not advise it to develop it, because we have got to go to the Sierras.

Senator FULTON. Which are you speaking of?

Mr. MANSON. I am speaking of the Alameda system.

Senator FULTON. You say you would have to go to the Sierras? Are there not other available supplies outside of Hetch Hetchy?

Mr. MANSON. There is first the Tuolumne River—

Senator FULTON. Without enumerating the different ones.

Mr. MANSON. Next—

Senator FULTON. Just wait a minute. Will you kindly answer the question, without enumerating all of them, but speaking of the most available ones? What would be the comparative difference in cost from taking one outside of Hetch Hetchy and the cost of Hetch Hetchy?

Mr. MANSON. The first price would be its acquisition from one of those other sources by whom it has been taken up, and is now owned by development companies or speculative companies, held for a price. Consequently I could not say; but I do know that every one of them is almost prohibitive in price, and every one who has appeared before these committees in opposition to San Francisco has suggested some source of water supply that is controlled by corporations, every time.

Senator FULTON. If you were awarded the reservoir site in the Hetch Hetchy, would that not necessarily also involve awarding to you the control of the area that drains into that?

Mr. MANSON. No, sir; decidedly not.

Senator FULTON. How would you guard against poisoning and polluting the water if you did not have control of it?

Mr. MANSON. That area is the least accessible of all the Sierra Nevadas. It is under the control of the United States Government, and we do not ask to modify in the slightest degree the control now so exercised over it. If in spite of that this area is subject to these poisoning influences, what must be the degree of pollution of other areas more accessible and not subject to governmental regulations?

Senator FULTON. That is not what I asked you at all. Did you understand my question?

Mr. MANSON. Yes; I did.

Senator FULTON. Can't you answer that question, namely, how would you guard against polluting the waters impounded in this proposed basin of the Hetch Hetchy if you did not have control of its watershed?

Mr. MANSON. I would have to forecast the conditions, first, that would contaminate that. I have been up in that region very frequently, and no occupancy of it now contaminates it to the slightest degree. Whenever in the future that area shall be contaminated

beyond the limits of reasonable potability, I would simply have the camps treated in the same way that they are now treated in the Yosemite Valley—namely, the campers, thousands of them, are required to observe ordinary laws of cleanliness and sanitation. Next, when in the remote future that watershed should become contaminated by the millions of people who were going up into that inaccessible region in four months of the year, then the same degree of care that is applied to the water of any other city can be applied. It is not altogether a question of pollution, it is a question of storage reservoirs; and if the area above that reservoir is polluted, if the tumbling down through a torrential canyon twenty-odd miles long and a fall of 4,000 feet and more does not remove any degree of pollution in that water, and if the further storage of that water for the several years that we will have to keep it (we will have to carry it over for dry years in the Hetch Hetchy reservoir), if that does not purify it as it does the water supply of Boston, or New York, or Baltimore, we will then resort to filtration.

Senator SMOOT. Is there any live stock in the Tuolumne Valley?

Mr. MANSON. In the Hetch Hetchy?

Senator SMOOT. No; in the whole region of the Tuolumne Valley?

Mr. MANSON. Yes; there are a few thousand head of stock.

Senator SMOOT. You would have to get those out, wouldn't you?

Mr. MANSON. Not necessarily.

Senator SMOOT. I certainly would not want them to run on the watershed furnishing water to the city that I lived in.

Mr. MANSON. There are very few up in there.

Senator HEYBURN. When you say there are a few thousand, what do you mean?

Mr. MANSON. I mean there are four hundred and some odd square miles of that watershed. There are probably a few hundred head of stock that go up there. I know one man, Senator Curtin, who, I think, has 200 or 300 head up in there, and they roam on the outside edges and go over the edge of the drainage basin.

Senator HEYBURN. What would keep them away from the reservoir?

Mr. MANSON. They could not go to the reservoir if they wanted to.

Senator DIXON. Mr. Schussler, what have you to say as to what the engineer of the city of San Francisco has now said regarding the prevention of pollution of the water, which strikes me as a very reasonable and comprehensive statement?

Mr. SCHUSSLER. The only method I have been able to find to keep pollution away from the water is to own, if possible, all the watershed, and have policemen on horseback to keep people out. That is what we have done.

Senator DIXON. Taking then 20 miles of mountain torrent—

Mr. McCUTCHEON. And assuming that it falls 4,000 feet.

Senator DIXON. I do not know how much it falls, but the filtration is possible, is it?

Mr. SCHUSSLER. Yes; you even filter the water of the Potomac River.

The CHAIRMAN. We drink Potomac water, with its 40,000 miles of watershed and a hundred towns.

Mr. McCUTCHEON. If you do that, then you do not have to go to Hetch Hetchy.

Mr. SCHUSSLER. Why not take it right at home out of the San Joaquin? I want to state in connection with this, it has been prominently asserted, I do not know whether by Mr. Phelan or by the engineer, that they must have the great peninsular reservoir if they can possibly get it, of the Spring Valley Water Company, namely, the great big Crystal Springs reservoir.

Mr. Phelan insinuated a while ago that they wanted to lower the death rate. I do not think it is quite his place, as former mayor of San Francisco, to advertise San Francisco as an unwholesome place on the ground that it has contaminated water. He says he wants to bring in a mountain supply to lower the death rate of the little children in San Francisco. Now, you could not imagine that he means anything else but that the water that is now supplied to San Francisco causes a great death rate. Now, this water is as wholesome as can be, and if they propose to use it, then they would have to put their mountain water into this contaminated reservoir (as they insinuate), and the water then would all have to be filtered anyway.

Mr. PHELAN. I was loath to introduce that subject, because after all, as I said, this is our water supply, but at home I boil all the water in my house, as do other citizens, and in my office I have spring water, brought in from outside, as most other business offices do, in great cans, which fact would indicate suspicion, because this water is of nearby origin, and we are afraid of contamination. As a matter of fact, chemical analysis from time to time shows it is pretty good water, but they are now using 3,000,000 gallons of water a day from Lake Merced, derived right from within the limits of the city and county of San Francisco. And while I hesitated to do it, since Mr. Schussler has driven me to it, I will read from the proceedings of the Commonwealth Club on page 290, where Major Hart, United States civil engineer, who succeeded Major Hewer, says:

This very plainly shows that typhoid fever in San Francisco during the years in question was dependent in a measure upon the rainfall. This had been attributed to the fact that the rains washed the slopes tributary to it and would carry pollution with it.

Senator SMOOT. That would be the case in this Hetch Hetchy Valley?

The CHAIRMAN. Oh, no; there is one thing I want to call your attention to. You must remember this is away up in the mountains, and there are only two or three months in the year that you find anything in there. Nine months of the year it is all snow and ice.

Senator SMOOT. I remember reading here not long ago of an epidemic of typhoid fever in one of the great cities of this country that came from simply the pollution of one man having typhoid fever, who camped upon the stream.

The CHAIRMAN. That is possible.

Senator SMOOT. Why, this is a health resort, and people go into that valley and camp, and whatever pollution there is will be washed into the river and taken into this reservoir and then into the city of San Francisco, and it will be just as detrimental to the health of San Francisco as is possible.

Senator DIXON. Which do you think would be the safer supply, away back in the mountains where no one lives and where a few tourists go in the summer, or down the slopes where people live all the time?

Mr. McCUTCHEON. You are entirely mistaken in reference to people inhabiting the slopes. We own those watersheds. I am surprised that Mr. Phelan should make that statement.

Senator DIXON. He said how many square miles?

Mr. McCUTCHEON. He spoke of the area within the limits of the city of San Francisco. To protect the lake upon that part of the property, as Mr. Phelan well knows, the company has constructed a conduit or drain, or a sewer you may call it, which catches all the water that flows off from the portion of the watershed that could possibly cause any pollution. That water is carried by an underground tunnel to the ocean. The remainder of the watershed is absolutely protected.

Now, I am surprised that Mr. Phelan should have said this, because when the matter arose in the House I called the attention of the committee to it, and said I desired to discuss that. Mr. Long, the city attorney of San Francisco, stated that he did not want that subject discussed, but that he was there to admit that the water furnished by the Spring Valley Water Company to San Francisco was good water. Do you want me to read that part of the record?

Senator SMOOT. No.

Mr. McCUTCHEON. That is in the House record. The legal representative of the city of San Francisco stated that it was unnecessary to discuss that.

Mr. MANSON. There have been so many allusions to the apparently antagonistic conditions which prevail between the company and the city that I want to give the idea of the basis of that; and it is very tersely expressed, as far as I can judge it after a number of years study of the whole thing, in this statement: The two ownerships, municipal ownership and corporate ownership, are so diametrically, so radically opposed to one another in principle, that wherever they have existed, wherever corporate ownership has existed, there has been this struggle going on. Even after the city has control there is a tremendous struggle, as there was in New York under that Ramapo outfit, to wrest the supply from the city; and the buccaneers of the Spanish Main, all the deviltry they kicked up was just a little bit of child's play beside what that company was trying to do.

I do not state that to insinuate that we are in the same fix by any means. We are in a worse fix. Our supply is owned, and unfortunately has been owned from the beginning, by a company. And only when there were two companies, the Mountain Company and the San Francisco Water Company, supplying water to the city was there any real peace in municipal circles as to water supply and rates. During that competition there was peace for a few years. One company eventually bought out the other, and it has practically been in some respects a position of armed truce ever since. But the reason of that is this: Under the corporation control the prime object is profit; what can the investment be made to yield in dividends, salaries, and interest? How can the stock be doubled and trebled with the least investment of capital, and how can laws restricting profits to a reasonable return on this investment be overturned? Under municipal ownership the prime question is, What are the lowest rates commensurate with an abundant and pure supply? These two ideas are so preeminently opposed to one another that under the most friendly form there is always friction, always trouble, and water

supplies are being gradually taken under municipal ownership in the United States.

Now, there has been so full a history given by Mr. McCutcheon that I do not think it is necessary to do anything except to say that since 1871 successive attempts have been made by successive boards of supervisors to acquire municipal control. Those have been unsuccessful one way and another, principally by reason of the fact that the city can not pursue a persistent and consistent policy through a single set of officers looking toward ownership. The owners, however, can foresee and forestall that; and with all this horrible maltreatment that Mr. McCutcheon has told you about, it is a matter of amazement to me that with this thing being solicited over and over again they should not be willing to make some sort of an offer to get rid of this horrible piece of property about which they are in trouble all the time, and let some of these efforts of the city succeed. Why this tenacity of holding onto this thing? Why this struggle to keep possession of something, when on a 10 per cent basis they say it has not paid a proper return on the capital stock? For Heaven's sake, here stands the city that is ready to buy it. You will find in the record of the House hearing that as city engineer—and I am not bound by any ideas at all of the law, nor anything else except what I think is right and just—at a time when the newspapers were ready to fly at the head of anybody who advocated this purchase, I went to Colonel Mendell, one of the noblest and best men I ever knew in my life, and persuaded him to join me in a recommendation to the then board of supervisors to purchase the Spring Valley Water Company's plant. I stated that at a time when they were ready to cut to pieces anybody who suggested it.

Mr. McCUTCHEON. Who was?

Mr. MANSON. The newspapers, that have been cited here as opposing this, and of whom fear has been expressed of their condemnation, because of which the action of the city officials has been held in doubt. Now, I subsequently went to Captain Payson, with whom I have been associated in engineer work, and I went to the other officers, and I used this language: "Gentlemen, you are playing a very dangerous game with the properties that you control;" and I begged them personally as an official of the city to make an offer in accordance with the terms of our charter. Those are rigid, requiring certain steps to be pursued before that can be accomplished. And in that portion of the charter which Mr. McCutcheon saw fit to characterize as silly, in 1900 that company used that provision of the charter to avoid making an offer of sale. Now they characterize it as silly because the board of supervisors were trying, in 1908, to follow that selfsame provision. He stated that first the board of supervisors passed a resolution declaring the Hetch Hetchy source to be an available source, and then asked the Spring Valley Water Company to make them an offer of the sale of the property.

It was I who recommended that step to be taken, and I did it at the recommendation of the city and county attorneys. We are required by that charter to ask a price, and estimate the price for an independent supply before we are permitted even to solicit an offer of the sale of existing utilities; and because we did not do that in 1900 we were practically thrown out of court and had to take

two years to modify the charter, in order to avoid making estimates on a whole lot of peices of property; and it was that very misstep on the part of the city which caused the attorney of the Spring Valley Water Company to pick the city up, and say, "You have not conformed to your own charter." Consequently, when we solicited an offer of sale again, Captain Payson never had made an offer of sale to the city. He said he would recommend to his stockholders that they accept a certain price, but I notice he never made it, and the moment the city took those steps which the charter prescribes it should take, that was withdrawn.

Senator DIXON. Would the city have paid \$32,000,000, in your judgment, for the waterworks?

Mr. MANSON. I doubt it, but that is not for me to say. I said in my testimony before that, being strongly in favor of the purchase of the Spring Valley Water Company's property before, I think, Mr. McCutcheon was connected with the company, and still being strongly in favor of it, I am willing to go before the board of supervisors with a personally, officially signed recommendation that they purchase the Spring Valley Waterworks, cutting out some of the Lake Merced properties, which I do not consider essential for the city to own, and I am willing to recommend that they purchase those properties, with that exception, at a million dollars or a million and a half more than the courts of my country have said is the value of the property. I am willing to go before the people of that city and to brave its press or anybody else with that recommendation. I am ready to do it now, to-morrow, or any other time. I am not bound by any of the rules that Doctor Gianini is, and I do not have to consult anybody to make a recommendation.

Senator DIXON. Would the price you would recommend be a million and a half dollars more than the courts have fixed, as against \$32,000,000?

Mr. MANSON. Twenty-seven million five hundred and eighty-eight thousand dollars in round numbers, I think, sir.

Mr. McCUTCHEON. Excluding four millions not in use, so that is \$31,500,000.

Mr. MANSON. I am willing to leave out that not in use property.

Mr. PHELAN. You do not mean to say you would give them more than \$32,000,000?

Mr. MANSON. No, sir; I said the value fixed by the courts of my country.

Mr. PHELAN. It does not refer to any particular court.

Mr. MANSON. If a particular court fixed the value of the property—

Mr. PHELAN. What do you refer to—a suit in condemnation? You ought to be clear.

Mr. MANSON. Here is a piece of property that the city has in use, through a private corporation. I am willing to recommend to the city officially that they purchase that property now in use for supplying San Francisco with water, at \$27,588,000 plus \$1,500,000, to get rid of this interminable quarrel between the two. If there is to be more property added to it, and I can find by careful investigation that that will ultimately be needed by the city, I am willing to take that particular property and estimate its value and add it to it.

Mr. McCUTCHEON. Are you willing to recommend the sale of the whole property at a million and a half dollars more than Judge Farrington found the whole property to be worth?

Senator SMOOT. I think his offer is virtually the same thing.

Mr. McCUTCHEON. Let me explain to you why it is not. There are some pieces of property, for instance, on this Alameda watershed, that were purchased by the company in anticipation of a future need. The company would have no use for those properties if the other properties that they were purchased to form a part of were cut away.

Senator SMOOT. I understood him to say that as far as they were concerned they could take those out.

Senator FLINT. That is another piece of property.

Mr. McCUTCHEON. That would leave us with some fag ends which we would have to sell to them at their own price.

Senator DIXON. Is your company willing to turn over this property to San Francisco at \$32,000,000?

Mr. McCUTCHEON. I was asked that question this morning. I presented a letter from the president, stating that he would recommend the sale of the property—

Senator DIXON. But that offer was withdrawn.

Mr. McCUTCHEON. That was withdrawn.

Senator DIXON. Now, at least they must make that declaration, according to the statute.

Mr. McCUTCHEON. I have no doubt you will agree with my construction that there was no necessity that they should declare that they intended to go to Hetch Hetchy in order to buy the Spring Valley Water Company. I say that would be a silly interpretation of the charter.

The CHAIRMAN. The last letter read from the company—

Senator DIXON. That withdrew the offer.

The CHAIRMAN. There was one that Mr. Phelan read subsequently, where they claimed they had options on other property outside of this, and they would not consider it unless it was included.

Mr. McCUTCHEON. I am going to put the whole correspondence in between the city and the company. When it was found by the company that that interpretation was put upon the letter, the company wrote another letter, saying that was not the construction intended to be put upon it, and that when the company made the offer is was to be in such form that the city could buy the then existing supply and take the option if it saw fit, or it could buy the then existing supply and disregard the option.

The CHAIRMAN. But they have never made a square offer.

Mr. McCUTCHEON. They have never made an offer?

The CHAIRMAN. They have never made a square offer. What is the use of contending that they have? You have not showed us in your whole argument that they have made a square, straight offer.

Mr. McCUTCHEON. Simply as I say—

Mr. MANSON. Well, the city has made several square solicitations for that offer, and the charter prescribes what the city must do. There is one other point I want to cover. We are not going to dig up the canyon of the Tuolumne and take it over into the Senator's State. We are not going to dig up Hetch Hetchy and carry it off the slopes of the Sierra Nevada. We are simply going to put it into the highest

use to which it can be put, and in order to do that the floor of that valley will have to be flooded with water.

Senator DIXON. What distance?

Mr. MANSON. About 5 miles, I should judge, and about three-quarters of a mile wide in its widest place.

Senator NEWLANDS. What would be the relative capacity of the reservoir, as compared with the present Crystal Springs Reservoir?

Mr. MANSON. Four times as great.

Senator NEWLANDS. Mr. Schussler, what do you say about that?

Mr. SCHUSSLER. The Crystal Springs Reservoir is now built to a capacity of 19,000,000,000. The Crystal Springs Reservoir as I planned it would have a capacity of first, 30,000,000,000, and eventually 45,000,000,000 gallons.

Senator NEWLANDS. Then you contend that at present the Crystal Springs Reservoir has over one-half of the proposed capacity of Hetch Hetchy?

Mr. SCHUSSLER. Yes; considerably over half. The proposed capacity of Hetch Hetchy is something like 30,000,000,000 or 32,000,000,000 gallons, while we can build our reservoir to 45,000,000,000 on one side of the bay, and 50,000,000,000 storage on the other side.

Senator NEWLANDS. Then it will take the two to equal this one?

Mr. SCHUSSLER. Yes.

Mr. MANSON. We can get from the two sources available in the Hetch Hetchy and Tuolumne 200,000,000 gallons of water per diem during the driest year.

Senator NEWLANDS. I am speaking now of the capacity of the reservoir.

Mr. MANSON. I think the first dam would store something like 79,000,000,000 gallons of water.

Mr. SCHUSSLER. It was proposed by Mr. Grunsky at about 30,000,000,000.

Senator NEWLANDS. My mind does not take in the figures. I wanted the present Crystal Springs Reservoir capacity, and I wanted to get the highest capacity of the Hetch Hetchy.

Mr. MANSON. We can build that dam up to 300 feet with safety.

Senator FLINT. According to your plans, what would be the comparative amount of water in Hetch Hetchy and in Crystal Springs?

Mr. MANSON. Crystal Springs now holds between 19,000,000,000 and 20,000,000,000 gallons of water. The first plan for Hetch Hetchy would more than double that, and the ultimate capacity would more than quadruple it. Furthermore, from this most extravagant table of the Spring Valley Water Company resources you do not get more than 100,000,000 gallons of water per diem, while the ultimate development of the other area, of the two reservoir sites, is double that.

Senator NEWLANDS. You heard what Mr. Schussler said, that the Calaveras dam would only take 136 square miles out of the 600 square miles of watershed tributary to Alameda Creek, which furnishes the subterranean supply of water to the lands you refer to. Do you admit the correctness of his statement with regard to that?

Mr. MANSON. With regard to area, yes. With regard to yield, no. The territory tributary to the Niles Cone is based on the fall of the Livermore Valley and the small valleys around it and the slopes of Mount Diablo and its range and Mount Hamilton and its range. The

maximum rainfall upon those is quite heavy in seasons like the one we are going through. The minimum rainfall is very much less, and the rainfall there is subject to far greater fluctuations, that is, it is less in a given dry year than in the other regions. Comparatively great changes have undergone the water supply of the Niles Cone, and I should think a far great proportion of it would come from the regions Mr. Schussler has very wisely chosen to develop first, namely, the Calaveras. Then on the other side of the valley it goes down to 15 inches as the amount of annual rainfall. That 15 inches if reasonably distributed through the wet months does not give any runoff at all. It takes about 13, 14, or 15 inches of rain to wet the ground after the long dry season, so that it does not give any runoff to go into the gravel beds.

Senator NEWLANDS. Then in a dry year your estimate is that the rainfall on the remaining 450 miles tributary to this lowland would give no underground moisture?

Mr. MANSON. Very little.

Mr. SCHUSSLER. You have made a statement that is not correct.

Mr. MANSON. I have heard several here that I did not think were.

Mr. SCHUSSLER. I have kept gaugings of the streams for twenty years, of the water emanating from the 600 square miles of watershed, and the average product in twenty years exceeds 100,000,000 gallons a day. That is the outflow over the surface. That does not take into consideration the amount of water that sinks into the gravel, on our subterranean property, which we can take out. I know what I am talking about, because that is what I am there for. I have kept a record for twenty years, accurate measurements, and for that reason I state that from my own knowledge, and taking full account of the evaporation in the future reservoirs to be built, we can supply fully 90,000,000 gallons a day from that region, which is a low estimate. Coupling that with the 21,000,000 gallons on the other side of the bay, that makes fully 110,000,000 gallons. Adding to that the coast streams, 25,000,000 gallons a day, which will be developed in connection with my big Crystal Springs reservoir, it makes a total of 135,000,000 gallons a day which can be developed, of a good quality of water, protected against pollution.

Senator NEWLANDS. Without imperiling these agriculturists at all?

Mr. SCHUSSLER. Yes, sir; and this supply of 135,000,000 gallons a day, according to the ratio of increase in consumption assumed by Mr. Grunsky in his Hetch Hetchy report of 1902, would meet the requirements of San Francisco until well into the twenty-first century.

Mr. McCUTCHEON. You say that takes into account the underground flow in the gravels, of which Mr. Manson has spoken?

Mr. SCHUSSLER. The Niles Cone or delta Mr. Manson speaks of is at the outflow of the Alameda Canyon, and that receives by infiltration a small proportion of the surface run-off from the Alameda Creek watershed. The lower portion of the Niles Cone is apparently connected with or a part of a great big subterranean reservoir or lake which underlies the southerly portion of the Bay of San Francisco and a portion of the adjoining marsh, which lake is tapped by many artesian wells, and is an almost inexhaustible supply. Whenever they sink artesian wells through the water, through the marsh, or anywhere into this subterranean lake which underlies the south end

of the Bay of San Francisco, the water rises, fresh, first-class water, 10 or 12 feet above tide. There is an immense amount of fresh water right there under the bay.

Mr. PHELAN. Have you not reduced the water plane by your diversion of the water up there?

Mr. SCHUSSLER. We have not at all.

Mr. MANSON. I reiterate that the Calaveras watershed yields per square mile more water to the region of the Pleasanton country and to the Niles Cone than does any other single watershed in that region, and Mr. Schussler's answer does not cover that point. The present water supply is 14,000,000 gallons per day; and if that be brought up to the tune of 60,000,000 gallons of water per day, I hold that the plane of low water in this inexhaustible region below there will be lowered, and when you lower that there will be a damage to the region below. Now, gentlemen, if you will permit me, I will call your attention to the history of this thing, which has been singularly omitted.

The CHAIRMAN. I should like to have you finish by 5 o'clock.

Mr. MANSON. I will, sir.

In October, 1890, the Congress saw fit to pass an extremely rigid and prohibitive law, setting aside some thousand or more square miles of the west slope of the Sierras as a reserve, subsequently known as the Yosemite National Park. The law regarding that, if strictly interpreted, would not permit the building of a road or a trail or the cutting down of a tree or the moving of a rock.

In 1898 the United States Government sent up the Geological Survey into that same region. It made surveys of it, mapped it with great accuracy, and you have the results of that great map before you in the relief plan or map which is here. It is so accurate that the features can be reproduced, so that anyone at all familiar with that country can recognize, on that model before you, every single feature of it.

They proved that that region produced a vast amount of water, that there existed in it storage reservoirs which could be utilized. Realizing that this country to the west of it was one which would ultimately demand the utilization of every single reservoir that can economically be used in that region, they surveyed, mapped, and estimated the cost and character of the works necessary to develop those reservoirs. Among others that they developed you will find that in part 4 of the report of progress of stream measurements for the calendar year 1899, this particular valley is distinctly surveyed, the contours given, the exact area, the levels, the dams necessary to build, the type of dam necessary, the conduits in which to draw the water off; every single general fact necessary for the utilization of that wealth of water is distinctly and clearly set forth in that report. That is in the report of progress of stream measurements for the calendar year 1899.

The CHAIRMAN. By the Geological Survey?

Mr. MANSON. Under the United States Geological Survey, Charles D. Walcott, Director.

Senator FLINT. The twenty-first annual report?

Mr. MANSON. The twenty-first annual report.

Mr. McCUTCHEON. Is not that exclusively for irrigation that it was recommended?

Mr. MANSON. No, sir; it makes no difference what it was for.

Mr. McCUTCHEON. It could not, so far as the use of the national park was concerned.

Mr. MANSON. Acting on that report, two years thereafter Congress saw fit to pass a law naming that particular park and others, and prescribing how those rights could be filed on and taken up. February 15, 1901, three years after this survey and examination by the Geological Survey, acting under the laws of Congress looking toward the development of reservoirs—and let me say right here that it does not make any difference whether we develop them now, or somebody else develops them in the future, those great reservoirs have got to be developed, have got to be used, if human progress is to go forward in the region west of the Sierra Nevada Mountains. San Francisco did more than file on that. Prior to the first law that I have named, namely, in 1890, private parties had gone up in there, realizing that those were beautiful meadows, with beautiful flowers and grass and one thing and another, and acquired title to those lands by preemption, homestead rights. San Francisco went up in there and bought those, and holds title to them. She holds the title to the major portion of the floor of that valley. As far as I can estimate from the maps, she owns six-elevenths and probably a little more.

The CHAIRMAN. Of the Hetch Hetchy Valley?

Mr. MANSON. Of the Hetch Hetchy Valley, in fee simple, under the laws of Congress. She holds, under further laws of Congress, the right to flood the remaining less than 500 acres of the floor of the Hetch Hetchy Valley.

Senator SMOOT. The right to flood—what do you mean by that?

Mr. MANSON. I mean the right to construct a dam at that point and fill it up with water up to any height that economy may dictate. She has that right now, under a grant made under the laws of Congress.

Senator FULTON. What are you asking Congress to do, then?

Mr. MANSON. We first filed upon that in 1901. In October we applied to the Secretary of the Interior, as the law prescribed; but in some way or other the very energetic and efficient engineer of the Spring Valley Water Company got to him and persuaded him before our application was considered, and our application was denied. We appealed, and it was denied again. It was referred to Secretary Metcalf, and he wrote an opinion in which he laid down the law of 1901 as the one which should guide the Secretary of the Interior, but supported him in his interpretation of the previous law of 1890.

Senator DIXON. Who was the Secretary of the Interior who denied that application?

Mr. MANSON. Mr. Hitchcock. Secretary Hitchcock also advised that the city of San Francisco come before Congress and ask for this grant, alleging that the law did not permit him to make it.

In compliance with that recommendation on the part of the Secretary of the Interior the San Francisco law officer, now one of the Commissioners of the Interstate Commerce Commission, Hon. Franklin K. Lane, drew a bill which was submitted to both Houses of Congress, and I do not know where it is now. I have never heard of it since.

Senator FLINT. When was that?

Mr. MANSON. In 1903.

Senator DIXON. Who introduced it?

Mr. MANSON. I could not tell you. I think it was introduced in the House by one of the representatives of San Francisco, Mr. Winn or Mr. Livernash, I do not know which.

Senator DIXON. Mr. Livernash did not stay long enough to put it through.

Mr. MANSON. It did not get before the committee.

Senator DIXON. Did we not turn Mr. Livernash out that year? I know I was a Member of the House.

Mr. MANSON. I think he was not reelected. Now, San Francisco concluded to be far more generous than has ever been required of any corporation taking up rights under this law or under any other law of the United States. We concluded to buy a sufficient acreage so that we could say, "We will restore to this park area the 500 acres or more that we want to exchange in the floor of this valley." We bought that acreage. Comparisons have been made as to what it was worth. We paid for it more than this Government ever received, forty times more than this Government ever received, for the most valuable piece of land now in the heart of the city of Chicago.

Mr. McCUTCHEON. What did you pay for it?

Mr. MANSON. One hundred and ten dollars and fifty cents an acre.

Mr. McCUTCHEON. What is it assessed for?

Mr. MANSON. I do not know, sir. It was in corporate hands, and the assessed valuation bears no relation to the real value. We paid out in investigations, and in the work necessary, more than \$100,000, and consequently we are before Congress asking this, and for why? First, because we do not wish an expenditure of \$40,000,000 to rest upon a revocable permit. Any future Secretary of the Interior may revoke this permit. The same conditions prevail with regard to rights taken up in other reserves, and in other pieces of public land under this law.

On February 1, 1905, a little more than four years ago, Congress saw fit to pass a law which makes all rights granted to corporations developing water power for any purpose whatever, and to individuals developing that water, irrevocable so long as they shall be used for the purpose, put to any beneficial use—

Senator SMOOT. I remember that law.

Mr. McCUTCHEON. There are a lot of private corporations that would be glad to know that was the law.

Mr. MANSON. I think they know it and that they have taken full advantage of it. If they have not they are at full liberty to do so.

Senator FLINT. You will find that it must be used for a municipal purpose.

Mr. MANSON. I will read the law, sir.

Senator FLINT. If you could sustain that theory you would get a very large fee from some power companies in the United States.

Mr. PHELAN. The Stanislaus company spent \$6,000,000 on such a privilege.

Senator SMOOT. I said they were very foolish indeed. I would not do it.

Mr. MANSON. Section IV of the act of Congress approved February 1, 1905 (33 Stat. L., p. 628), reads as follows:

That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves

of the United States, are hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purpose of the milling and reduction of ores, during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively located.

Senator FLINT. That limits it to municipal and mining purposes?

Mr. MANSON. Any beneficial use.

Senator FLINT. Oh, no; municipal and mining purposes.

Mr. PHELAN. Ours is municipal, I presume.

Senator FLINT. If the municipality engaged in it.

The CHAIRMAN. This would be municipal use.

Senator FLINT. So far as the city is concerned, it would be all right. So far as a private power company is concerned, that is what they have been contesting for a long time.

Senator HEYBURN. That section provides for a right of way only. Now, your dam or reservoir would not be a right of way.

Mr. MANSON. A right of way for a reservoir or a canal.

Senator FULTON. If it relates simply to a right of way, you could not get anything under that.

Mr. PHELAN. The question of the law came up the other day.

Senator SMOOT. This is the act of February, 1905.

Mr. PHELAN. This is the law under which we made application to the Secretary.

Mr. MANSON. You will find in the testimony of Assistant Attorney-General Woodruff, of the Interior Department, before the House committee the full interpretation of what this matter of right of way means. It means the right to use the privilege, which in the case of San Francisco—

Senator NEWLANDS. Does it mean the right to construct a dam?

Mr. MANSON. Certainly.

Senator HEYBURN. It means an easement.

Mr. MANSON. It means the uses for which it was granted. If it requires the cutting down of a tree, if it requires the use of a meadow, if it requires the moving of a rock, we can do it.

Senator FLINT. You mean the municipality can do it?

Mr. MANSON. Yes; but under the law under which it is granted this right is revocable at the pleasure of the Secretary of the Interior, and we have applied to Congress under a recommendation from our Secretary of the Interior to have that granted in such form as to make it irrevocable during its period of beneficial use.

Senator SMOOT. This law you read only applies to the forest reserves.

Mr. MANSON. Yes; it does not apply to ours at all. Now, we have gone beyond what they get. They get this by filing, taking it up, and it is irrevocable so long as it is in beneficial use. We are subject to revocation. And simply to remove this revocable nature of our permit we have stepped forward and offered to make this exchange for the remainder of the lands. We already own the major portion of the land.

The CHAIRMAN. You say you own six-elevenths of the floor of the valley?

Mr. MANSON. Yes; you will find the map will show that.

Mr. PHELAN. What do you offer for the other 5 acres?

Mr. MANSON. We offer acre for acre, the same amount as there is on the floor.

Mr. PHELAN. What are they—camping places?

Mr. MANSON. Yes.

Senator NEWLANDS. Elevated above the floor?

Mr. MANSON. The map will give you a better idea of where they are situated. Tiltill Valley is right above Hetch Hetchy. It is the valley of Tiltill Creek, within a few miles of Hetch Hetchy. In that region the city owns 160 acres. Whenever the officers of the United States Government go up in there for pleasure, they go up the Tiltill Valley. I have seen them in there twice.

Mr. SAMPSON. May I say one word in reference to the Tiltill Valley? One half of the Tiltill Valley is a submerged swamp, with flags and reeds, and only one-half of it or less than one-half of it is grass.

Mr. MANSON. All of the Hetch Hetchy Valley is subject to inundation, and is coarse grass and weeds, subject to overflow, and breeds any quantity of mosquitoes that will drive you out of there directly after the snow gets off.

The next point is a few miles beyond Hetch Hetchy, on the trail from the Hog Ranch. It is a point where, every time I have been through there, I have found United States Government officials quartered on that with their troops.

Mr. PHELAN. That is outside the watershed, is it?

Mr. MANSON. Yes. Beyond that is the Hog Ranch. At present the Hog Ranch is outside the park lines and inside the reserve immediately adjacent. At the time we undertook to acquire it it was inside the park lines, but for economic reasons the line has been shifted, so it is not now included. That is the region where last summer upon two occasions when I passed through it the United States Government had its troops there, and its telephone station. It is the last point reached by the roads in that direction. The Yosemite Valley is some 20 miles farther south in a direct line. The point is one from which radiate several trails and reached by two different roads. It is an important strategic point in the administration of affairs. We own over 320 acres of land. It is all indicated in colors on the map.

So we are not before you asking a grant. That has been made, so far as your laws permit. We are before you asking for an exchange of land, the city of San Francisco holding the title to certain pieces which the Government is desirous of acquiring the present ownership of.

Senator HEYBURN. How did the city of San Francisco come to buy separated tracts of land?

Mr. MANSON. They were the only ones we could buy.

Senator HEYBURN. For what purpose did you buy them?

Mr. MANSON. To exchange, under the terms of the agreement.

Senator HEYBURN. You bought them to use in making a trade?

Mr. MANSON. Yes.

Mr. PHELAN. The Secretary of the Interior advised that we acquire the lands of the floor of the valley, which all belonged to one owner. So we took all he had. The land belonged to a man named Smith and a relative of his, a woman, so we bought them all.

Senator HEYBURN. Did he homestead them?

Mr. PHELAN. His father took them up. He was a sheep man. They were most desirable places to camp, and as such they would be valuable to the national park.

Mr. MANSON. So, gentlemen of the committee, this is not a bill to make a grant. That has been made in accordance with your laws already. We simply wish to remove the revocable character of our permit, so that the investment may be good. If Congress sees fit to do it for that great and growing city, stricken as she has been in the last three years, we will be deeply grateful. If Congress does not do that, then we will have to accept the revocable character of the grant and go right straight ahead and develop it. That is all we can do. We hope Congress will have the time at this session to approve this exchange. A great deal of time has been spent here in the consideration of extraneous things that have nothing in the world to do with the question. We just simply want to make that exchange in order to be on a perfectly safe basis to go ahead. We must go ahead. We have got to. We can not help ourselves. There are other sources of water supply which, under the laws I have referred to, have been confirmed to private corporations that have taken them up. We wish not even the same treatment. We wish a less generous treatment. We, impoverished as we are, are willing to say to this generous Government: "We will do the best we can. We will give you back acre for acre the land that you want to recover and that you use every time your officials go up in there." You use them for the administration of the affairs of that region. Now, if there are any questions—

The CHAIRMAN. Gentlemen, it is 5 o'clock and we shall have to close this hearing.

Mr. McCUTCHEON. I desire, Mr. Chairman, to incorporate in the hearing the letters from the president of the Spring Valley Water Company to the city, under date of April 13, 1908, May 21, 1908, and several letters which are set forth in this paper which I have in my hand.

The CHAIRMAN. They may be incorporated here.
(The letters are as follows:)

SAN FRANCISCO, CAL., May 14, 1908.

HON. W. S. JOHNSTON,

*Chairman of the Special Committee
of the Board of Supervisors on Water Supply.*

DEAR SIR: At the conference had at your request in the office of the city attorney on Saturday, May 9, you stated that the supervisors felt that the offer of the Spring Valley Water Company for a sale of its property to the city, made first through the federated committee and later repeated in my letter of April 13 to your committee, was not in a sufficiently valid and binding form to enable the supervisors to act upon it.

You suggested, further, that it was necessary, before the supervisors could take action, that there should be some confirmation of this proposal made by the directors of the company emanating from its stockholders.

The offer made through the federated committee was reported to the stockholders at the annual meeting of the company in January, and this report, in a printed statement, has been sent to all of the stockholders, and the proposal made in my letter to your committee of April 13 has also received the widest publicity; and thus far there

has been no dissent from the stockholders as to this proposition for a sale.

The only thing further that could be done by the stockholders would be the formal ratification of the offer of the president at a meeting called for that purpose. This action could hardly be expected in advance of some step by your committee indicating that it favors the acquisition of the property on the terms named.

If the stockholders were called together to consider this matter, they would undoubtedly ask the officers whether or not any suggestion or intimation had been made by your committee of a willingness to recommend the purchase of the property by the city on the terms named. We would be compelled to inform them that no suggestion or intimation had been made, and we think it highly improbable that any further action whatever would be taken by them in the absence of some such evidence of a serious purpose on the part of the city to carry out the plan of purchase.

While the offer made to you in my letter of April 13 has never been formally authorized by the stockholders, nevertheless, I have evidence, which is entirely satisfactory to myself, that the stockholders will formally ratify that offer as soon as they shall have some evidence of a desire on the part of the city to acquire the plant on those terms, or some other consideration which would justify them in ratifying a formal contract made by the directors giving an option on the property for a specified time.

The offer made for a sale was made in good faith, has been practically assented to by the stockholders, and undoubtedly will be carried out on their part should the city show a disposition to meet them with similar evidence of its own good faith.

Your committee has had this matter under advisement for a long time. It has probably formed an opinion as to the desirability or undesirability of acquiring the property on the terms proposed. We think it is not unreasonable to ask that you give us some evidence of your attitude toward the proposition before we call upon the stockholders to take formal action.

I have heretofore said to you, and I can not too strongly repeat it, that the stockholders consider the price named far below the actual value of the property. You can appreciate that, under these circumstances, it is asking a good deal of them to tie the property up by an option, under which the city may never do anything, and this without any suggestion or intimation that the members of your committee or the members of the board of supervisors favor the purchase.

The terms made to you were in contemplation of a sale to be definitely determined upon within the near future and consummated as soon as the necessary financial arrangements could be completed by the city. It is not our intention to give you an option for an indefinite period, which would make it impossible for the company to deal otherwise with the property and which, at the same time, would impose no obligation, moral or otherwise, upon the city.

Very truly, yours,

A. H. PAYSON.

[Sent to supervisors and mayor.]

JUNE 22, 1908.

DEAR SIR: In a letter addressed to the special committee of the board of supervisors on water supply, under date of April 13, 1908, I stated that the directors of the Spring Valley Water Company would recommend to the stockholders of the company the sale to the city and county of San Francisco of the property (of the company) for the face value of its outstanding bonds and the outstanding stock.

No response has been made to my letter. You have fixed rates on a basis of valuation very much below the figure named, and have resolved in favor of the acquisition of another water supply.

The offer made to recommend to the stockholders a sale on the terms stated is therefore hereby withdrawn.

Very truly, yours,

A. H. PAYSON, *President.*

SAN FRANCISCO, CAL., *September 11, 1908.*

The Board of Supervisors of the City and County of San Francisco.

GENTLEMEN: We beg to acknowledge receipt of your resolution No. 505, new series, requesting that this company submit a price at which it will sell its property to the municipality.

Before this action was taken you passed a resolution declaring that the Hetch Hetchy supply was a desirable one for San Francisco, and you declined to include the plant of this company in the property, which you declared it desirable that the city should acquire.

The charter provides that before you acquire a public utility you shall solicit offers of sale of any existing utility. We regard your resolution requesting this company to submit a price as a mere formal compliance with this charter requirement.

Assuming that the resolution declaring in favor of the desirability of the Hetch Hetchy supply—in which you declined to include the property of this company—was passed by you after a full investigation, it indicates that the municipality does not want to buy the property of this company at its fair value. If, however, you do really wish to acquire its property, it is unfortunate that your action has necessarily tended to depreciate and minimize its value in the public mind. Under these circumstances, the company can not be blamed for feeling satisfied that any negotiation looking to the sale of the property to the city would be fruitless and for believing further that, until your attitude undergoes a change, the electors will refuse to ratify the purchase at any price which the stockholders will be willing to accept.

Conflicting statements have been made regarding the water development of which the properties of the company are capable. This is a question that vitally affects value, and therefore any proposition of sale that may be made to the municipality will be in such shape as to remove any question of fact concerning this vital issue, and to that end will fix a minimum daily delivery.

Furthermore, it has not been possible in the time fixed by your resolution to arrive at a price at which the company will guarantee a stated development from the properties now owned by it, as, for

instance, the delivery of 110,000,000 gallons or more daily (equal to more than three times the present daily consumption).

It may be of interest to you to know that the company is negotiating for and feels warranted in stating that it will obtain an option on a Sierra water supply and also an option for the delivery of more than 250,000,000 gallons daily from that supply into its system at Pleasanton.

This Sierra supply is supported by a perfect and unquestioned title.

Should the company make an offer, it will embrace an option to the city to include this Sierra supply, in addition to the existing properties of the Spring Valley Water Company.

Respectfully,

THE BOARD OF DIRECTORS OF THE
SPRING VALLEY WATER COMPANY,
By J. M. DUKE, *Secretary*.

OFFICE OF CLERK OF BOARD OF SUPERVISORS,
San Francisco, Cal., September 15, 1908.

SPRING VALLEY WATER COMPANY,
San Francisco, Cal.

GENTLEMEN: Your communication of September 11, 1908, addressed to the board of supervisors, was presented to said board at its regular meeting on September 14, and was by said board referred to the committee on public utilities for consideration.

We acknowledge the receipt of your communication and reply thereto as follows:

The committee extremely regrets that your corporation has not seen fit to avail itself of the opportunity to submit an offer to sell to the city and county of San Francisco the system of water supply and works now supplying water to the city and to its inhabitants.

While it is to some extent true that the solicitation of an offer from you to sell such property was fulfilling a charter requirement, nevertheless, beneath the "mere formality" there exists on the part of the individual members of the board and the members of this committee in particular an earnest desire to acquire your properties at not merely a reasonable value, but at such a price as the city would be justified in paying therefor.

We think that you do the officials of the city a great injustice in assuming that the "municipality does not want to buy the property of this company at its fair value." This unwarranted assumption appears to be based upon an alleged action of the board in declaring in favor of the desirability of a Hetch Hetchy supply "in which we declined to include the property of this company."

While no explanation of this action is necessary, we wish to call your attention to the provision of the charter that requires that before the city can acquire a public utility of this kind it must obtain plans and estimates of cost of such utility by original construction and indicate a source of supply.

The resolution referred to was therefore essential to the plan of acquiring your property, and to have included your property in the

same ordinance might have resulted in invalidating the procedure taken looking toward the securing of a municipal water supply.

We therefore feel that your attitude in declaring that "any negotiations looking to the sale of the property to the city would be fruitless" is founded on a misconception of the legal obligations imposed by law on the board of supervisors. Certainly it is that no action thus far taken by this board was intended to "depreciate and minimize" the value of your property in the public mind, and the attitude striven to ever be maintained by the board has been one of an impartial and disinterested body ready to do equal justice to yourselves and the electors of the city and county. Our attitude in this respect, we beg to assure you, will undergo no change.

We note in this connection that you are contemplating submitting an offer to sell to the city and county much more property than is embraced in the terms of the ordinance—in that the price will be for a stated development three times the present consumption; and also will embrace an option to the city to include a Sierra supply.

It is our earnest hope that should you make an offer to sell your properties to the city and county you will confine such proposition to that described in the ordinance.

We beg to remind you that the proceedings pending involve the creation of a bonded debt for a large sum, and that it is essential that such proceedings should be conducted in such manner that the validity of a bond issue can not be questioned. Any foreign matter interpolated in these proceedings would also tend to destroy the object that you deem so essential, namely, the acquisition of your property at a fair valuation.

Therefore, should you be desirous of complying with the request of the board of supervisors it will be necessary to confine your offer to the property which constitutes an existing utility, as that term is used in the charter.

We bespeak for such an offer from you a most careful and immediate consideration.

Respectfully,

A. H. GIANNINI,
D. C. MURPHY,
R. McLARAN,
Public Utilities Committee.

SAN FRANCISCO, CAL., September 18, 1908.

To the Public Utilities Committee of Board of Supervisors, City and County of San Francisco, and A. H. Giannini, D. C. Murphy, and R. McLaren, Members of said Committee.

GENTLEMEN: Referring to your letter of September 15, 1908, you seem to have the impression that our letter to you said, in effect, that should we make an offer of sale of the Spring Valley property to the city and county it would be so coupled with an option on a Sierra supply as to require the acceptance or rejection of both. This was not intended. Nor do we think the language of our letter susceptible of that construction. Our offer, if we make one, will be in strict compliance with the charter so far as the existing utility is concerned.

We feel warranted in stating that we will obtain an option on a Sierra supply. It will be obtained without cost to us and will impose no obligations. We quote from our letter of September 11:

Should the company make an offer, it will embrace an option to the city to include this Sierra supply in addition to the existing properties of the Spring Valley Water Company.

This option, in the event that the city shall purchase our property, will be turned over to the city without cost, and if it does not feel inclined to avail of it it need not do so. On the other hand, if upon investigation—and there has never been any investigation of this Sierra supply by the representatives of the city—it shall be deemed advisable to avail of the option that course may be pursued. In other words, the city will get for nothing an option on a supply, the title to which is unquestioned, and this option will impose no obligation whatever upon the city.

As we stated in our letter of September 11, we thought the above information would be of interest to you.

Yours, respectfully,

SPRING VALLEY WATER COMPANY,
By J. M. DUKE, *Secretary*.

SAN FRANCISCO, October 2, 1908.

The Board of Supervisors of the City and County of San Francisco.

GENTLEMEN: We have concluded that no useful purpose, either for the city or the company, can be served by making an offer for the sale of the company's property, as requested by your ordinance No. 505. The officers of the company during the past year have done everything in their power to call public attention to the absolute necessity for the purchase of the company's plant by the city, or a radical change in the rate-fixing policy hitherto pursued, if the city was to be saved from imminent danger.

In this connection the company heretofore offered, both through the federated commercial bodies and afterwards directly to the supervisors, to sell the company's property for \$32,000,000.

In the offer as it was originally made, and since in the subsequent exhaustive presentation of the entire subject to the supervisors and to the public, it was clearly made of record in behalf of the company that the price named was believed to be much less than the value of the property and that it had only been made as a compromise which would have been accepted by the stockholders under financial conditions then existing and in their desire to offer the city an easy and fair way out of complications which seemed to jeopardize the vital interests of all citizens.

It was also clearly and repeatedly stated that the rejection of this offer for a sale and the refusal of rates which would yield a fair return upon the suggested price would oblige the company to continue the effort which it had already begun for the establishment by judicial decision of what the officers of the company believed to be a fair and much higher valuation.

The city accepted this latter alternative by declining to consider the company's offer for a sale, and by attempting to fix rates upon an

arbitrarily assumed valuation of about \$25,000,000, and expressly refusing to make any allowance for depreciation, thus deliberately forcing the company again into the courts, where the questions at issue are still pending.

It seems to follow clearly from the facts thus briefly recited:

First. That the city authorities can not consistently, with their previously announced conclusions, recommend to the voters the purchase of the Spring Valley property at any price which would now be considered by the stockholders.

Second. That in view of the misrepresentations which have been so long and consistently made as to the value of the company's property, and the difficulty in which the general public naturally finds itself in passing on a question of such importance with the conflicting evidence before it, there seems no possibility that any price which the company would now accept would be ratified by the voters at the present time.

In the existing and radical difference of opinion as to value, it seems to us that the only hope of a settlement lies in awaiting the additional light upon the controversy which may be expected from a judicial opinion upon the evidence which has been so fully presented upon both sides. The company's brief in the main litigation involving the question of value was filed last April, and we are anxiously awaiting the city's reply.

Respectfully,

THE BOARD OF DIRECTORS OF THE
SPRING VALLEY WATER COMPANY.

SAN FRANCISCO, *October 5, 1908.*

The Board of Supervisors of the City and County of San Francisco.

GENTLEMEN: This letter is sent with the hope that the facts which we call to your attention may deter you from passing ordinance No. 677, the passage of which, we believe, may embarrass the bringing about of conditions vital to the best interests of the city.

With this purpose in view, we beg leave to place the following facts before you:

The acquisition by San Francisco of a so-called Sierra water supply has been the subject of discussion for many years. Several sources from which it has been said the city might obtain water have received more or less attention, and among these the source or supply commonly known as the "Hetch Hetchy system."

In the event that Lake Eleanor shall be converted into a reservoir its supply will come from the watershed feeding Tuolumne River. In the event of the conversion of Hetch Hetchy Valley into a reservoir its source of water supply will be the Tuolumne River. This river flows through a territory in which there are a number of available reservoir sites, some of which are below and a number of which are above Hetch Hetchy Valley. That there are on Tuolumne River above Hetch Hetchy sites which are easily convertible into reservoirs and which, if so converted, would be capable of impound-

ing very large quantities of water, no one familiar with the country or who has investigated the subject will deny.

Hetch Hetchy and Lake Eleanor are within the boundaries of the Yosemite National Park.

We are aware of the stipulation entered into between the Secretary of the Interior and the city, and we are also aware of the granting of the city's application for reservoir rights of way by the Secretary under date of May 11, 1908. Neither the stipulation nor the granting of the application has conferred any right upon or vested any interest in the city which can be made the foundation for the expenditure of public money. The city has not acquired any such right as it must have before its moneys can be expended in the development of property for or to be used as a public utility.

The order of the Secretary of the Interior was issued under the provisions of the act of Congress of February 15, 1901, entitled "An act relating to rights of way through certain parks, reservations, and other public lands." That act contains the following proviso:

And provided further. That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right or easement or interest in, to, or over any public land, reservation, or park.

It is to be understood, therefore, that the granting of the application by the Secretary has given the city only a revocable permit, and has not conferred "any right or easement or interest in, to, or over any public land."

Under the charter you are authorized, after appropriate proceedings have been taken, to acquire, by purchase or condemnation, lands necessary for constructing or maintaining canals, aqueducts, reservoirs, etc., for conducting or storing water for the use of the city and county or the inhabitants thereof. The so-called grant of the Secretary of the Interior is a mere revocable permit. He could not and can not give you anything more. You have not acquired, and will not acquire, any lands under this permit. Indeed, you have not acquired anything that can be dignified to the extent of calling it property or a property right. Some of the lands which by the terms of the stipulation, you are required to purchase are outside of and entirely apart from, and can not be used in connection with any public utility of which Lake Eleanor or Hetch Hetchy will form a part. The stipulation requires you to purchase these lands in order that you may, in the event of some action by the Congress of the United States, exchange them for lands belonging to the Government. You have no right to acquire these lands, and if you acquired them you would have no right to exchange them for lands belonging to the Government. Therefore if you expend any public money for the purchase of these lands in order to enable you to carry out the stipulation which you have made with the Secretary of the Interior, or if you expend any public money to carry out any of the purposes named in the stipulation, it is clear that you will do so in violation of the provisions of the charter.

The stipulation provides that the city shall not interfere in the slightest particular with the right of two irrigation districts to use

the natural flow of Tuolumne River and its branches to the extent of 2,350 second-feet, or approximately 1,500,000,000 gallons per day.

The stipulation also provides:

5. The city and county of San Francisco will in no way interfere with the storage of flood waters in sites other than Hetch Hetchy and Lake Eleanor by the Modesto and Turlock irrigation districts, or either of said districts, for use in said districts, and will return to the Tuolumne River above the La Grange dam, for the use of said irrigation districts, all surplus or waste flow of the river which may be used for power.

If the irrigation districts should establish reservoirs above Hetch Hetchy, they would have the right to store flood waters in those reservoirs. If they should establish reservoirs below Hetch Hetchy, they would have the same right with reference to flood waters, and if the city should attempt to prevent such flood waters from flowing into the reservoirs of the irrigation districts it would unquestionably be interfering with the right of storage recognized by clause 5, which has been quoted.

By the provisions of this stipulation the irrigation districts are entitled to a mean flow throughout the year of 2,350 second-feet, and in order that the natural flow may be increased so that they may receive a supply of 2,350 second-feet during the dry season this right of storage is recognized. The mean flow of Tuolumne River at La Grange, as shown by state and government records preserved for a period of years, is less than 2,700 cubic feet per second—the water measured at that point being the run-off from 1,500 square miles of territory—whereas the run-off which will reach Lake Eleanor and Hetch Hetchy is from about 580 square miles.

The records of the United States Geological Survey show that from and including 1896 to and including 1906—eleven years—there were six years when the average flow of the river at La Grange was less than 2,350 second-feet, and that there were three successive years when the mean flow was only 1,182 second-feet, 2,315 second-feet, and 2,160 second-feet, respectively. These were the years 1898, 1899, and 1900. The average flow for these three years was 1,886 second-feet, or 464 second-feet less than the quantity assured to the irrigation districts under the stipulation heretofore signed by the city. If the city were to build the proposed Hetch Hetchy dam under the stipulation which it has signed, and the experience of the three years referred to were to be repeated, it would not be entitled to impound any water at all during those three years unless the irrigation districts were not able to use the quantity which the stipulation recognizes their right to take. These measurements are easy of verification. They are to be found in the published records of the United States Geological Survey, and, indeed, they are set forth in detail in the report of C. E. Grunsky, city engineer, made to the board of public works in July, 1902, a copy of which is on file in the office of the clerk of the board of supervisors, as we are informed.

It may be accepted as a fact that at the time Mr. Grunsky reported on the so-called Hetch Hetchy supply he did not understand or believe that the right of the city would be subject and subordinate to a prior right of the irrigation districts to take 2,350 second-feet. In his reports with reference to the quantity of water which can be impounded in and withdrawn from Hetch Hetchy Valley there is not even the remotest suggestion of a prior right to 2,350 second-feet in the irrigation districts.

We know it has been said that there is ample water (in the proposed Hetch Hetchy supply) to answer the future needs of the city after the rights of the irrigation districts, as they have been defined by the Secretary of the Interior, are fully supplied. This statement can not be based upon the state and government records which have been preserved and to which you, with all other citizens, have free access, and if not based upon those records we think it may be confidently asserted that there are no reliable data to sustain the claim.

Considering these prior rights of the irrigation districts (and there are other prior rights, of the extent of which we are not advised), and considering the information afforded by the records of the United States Geological Survey, is it not at least doubtful that the city will be able to obtain from this source sufficient water to supply its future needs?

We suggest, inasmuch as you propose to buy lands within the limits of Yosemite National Park, which you are in turn to transfer to the Government of the United States in exchange for lands in Hetch Hetchy Valley, that, under the existing laws of the United States, you can not acquire any government land in Hetch Hetchy. The answer to this will be that Congress will pass an act enabling the city to acquire this land from the Government.

It is unlawful to employ the public funds for the purchase of property for which the city will have no need in anticipation of being able to exchange it for lands to which, until Congress repeals existing laws or passes some new law, it will not be able to obtain any title.

It is illegal for you to incur on behalf of the city an indebtedness which will be of no benefit to it unless the Congress of the United States shall hereafter take some action which you desire to have taken.

It is illegal for you to expend the public money in the acquisition of property which, under existing laws, will be valueless to the municipality.

If, under the existing laws of the United States, the purchases which you propose to make will be of no benefit to San Francisco, you are without authority to incur the expense of an election in anticipation of the repeal of those laws or the enactment of new legislation by Congress.

The nature of the business in which this company is engaged has naturally kept it in touch with all phases of the water situation in northern California, and has enabled it to collect information of great importance pertaining to any water supply for San Francisco.

The Secretary of the Interior states in his permit, "the present water supply of the city of San Francisco is both inadequate and unsatisfactory." If there was any foundation for that statement it rested upon financial, and not upon physical conditions.

In order to put at rest the question of the development of which the property of this company is capable, we were considering, as we informed you in our letter of September 14, 1908, submitting an offer of the property to the city with a guaranteed development of 110,000,000 gallons or more per day. In the same letter we informed you that we would obtain an option on a Sierra property, which option would be without cost to the company and, in the event of the purchase by the city of the Spring Valley property, would be turned over to the city without cost. In reply to this letter your

public utilities committee informed us that all you desired was an offer of our property as at present developed.

You are doing what you consider to be to the best interest of the city, but, while declining to entertain the purchase of our property with a guaranteed development, and with an offer of a Sierra supply of unquestioned title and capable of delivering at least 250,000,000 gallons per day practically before you, which you also declined to entertain, is it entirely consistent, in view of your expressed desire to provide a permanent and practically inexhaustible water supply, to involve the city in debt by taking steps to acquire the so-called Hetch Hetchy system, the title to which is bad, and the delivery from which (after prior rights are satisfied) is at best a very doubtful quantity?

No one of judgment can believe that the passage of the ordinance will enable the city to obtain the Spring Valley property for less than it would otherwise be required to pay. Your proposed action being illegal, no benefit can flow from the adoption of the ordinance, but its passage will unquestionably tend to render a complex condition more involved.

We fully realize that in placing this letter before you we have not chosen the easier path of silence. Our motive will be questioned. However, the facts we have recited are of record—most of them in your own office—and that they are called to your attention by the Spring Valley Water Company does not render them of less importance.

Respectfully,

THE BOARD OF DIRECTORS OF THE
SPRING VALLEY WATER COMPANY,
By W. B. B. INGALLS, *Secretary*.

OFFICE OF THE CLERK OF THE
BOARD OF SUPERVISORS,
San Francisco, Cal., December 1, 1908.

W. B. BOURN,
*President Spring Valley Water Company,
375 Sutter Street, San Francisco, Cal.*

DEAR SIR: With reference to your communication of the 20th instant, addressed to the finance committee of the board of supervisors, stating that as a matter of common fairness you trust that some suitable provision be made that the 15 per cent increase in the rates shall be paid by the city and held in escrow in the event that the ordinance shall be officially held to be invalid, I am directed to advise you by the water rates committee of the board, to whom said matter was referred, of the attitude of said committee in this regard.

When the budget of the fiscal year 1908-9 was framed provision was made therein for the payment of municipal water service, and the appropriation then fixed was nearly two and one-half times greater than that of the previous year, and, moreover, when the budget was adopted the supervisors were unaware of the intention of the water company to litigate the ordinance, and it was hoped at that time with such a large appropriation being made for the fiscal year 1908-9 that such a course would be unnecessary.

Under the circumstances, and in accordance with the opinion of former City Attorney Lane, rendered some years ago, it is not within the province of the board of supervisors to increase at this time the budget appropriation for water service, and you are so advised.

Yours, truly,

JOHN E. BEHAN, *Clerk.*

DECEMBER 3, 1908.

To the Water Rates Committee of the Honorable the Board of Supervisors of the City of San Francisco.

GENTLEMEN: We beg to acknowledge the receipt, through Mr. Behan, of your communications dated November 30 and December 1.

At the meeting of the board of directors of this company, held on November 27, the subject-matter of your communication dated November 18 was placed before them. Answer thereto was deferred pending receipt of your reply to our request for provision for the payment for the service rendered the city of San Francisco by this company, as per the decree of the circuit court.

With the hope that a frank expression of the attitude of this company toward the administration of the municipal affairs of the city may tend to better conditions relative to the water supply of the city of San Francisco, we make answer to various matters that have been the subject of correspondence between the administration and this company.

The management of this company considers that it is administering a public trust. We are endeavoring to maintain and build up a vital necessity. The affairs of the company are administered under the law. You have made it necessary at this time to review the relationship that has existed between the board of supervisors and this company during the last few months.

Under date of April 13, 1908, this company appeared before you and in good faith made a statement of its case, first, as concerned the water supply of the city of San Francisco, and, second, as concerned the income of the company. Under date of May 21, 1908, and after the committee on water supply had recommended the adoption of the ordinance subsequently passed, the position of the company was further placed before you, and you were informed that if the ordinance were passed the company would be forced to accept your invitation to rely on its constitutional rights. Therefore, your statement that you "were unaware of the intention of the water company to litigate the ordinance, and it was hoped at that time * * * that such a course would be unnecessary" seems to lack candor.

If the desire to pay a reasonable compensation existed—if you were prompted to treat this company with common fairness—we are informed that you could find a way, notwithstanding the budget, to pay for the service which it renders to the city. The circuit court, after a full presentation of your side of the case, decided that the rates fixed by you—including the rates for water to the city—were 15 per cent lower than in justice they should have been. You now decline to pay, or arrange for payment in the future, of this 15 per cent, and you justify, or rather excuse, your refusal

upon the score that there is no provision in the budget from which payment can be made or secured.

If we are not misinformed, the omission of the budget to provide moneys for certain purposes has not always been deemed sufficient to deter you from using moneys for those purposes. We refer particularly to the expenses of a trip made by some of the supervisors to Tuolumne County, and the publication and distribution of literature to promote a favorable vote on the Hetch Hetchy proposition. Was there any provision in the budget for these expenditures? Must the charter or the budget be stretched more to provide funds to pay fair compensation for a vital necessity than was necessary to find a provision under which the expenses referred to were allowable?

You cite an ordinance of a dishonest board of supervisors as an evidence of your justice and generosity in establishing water rates for this year. You hardly wish to be understood, we hope, as claiming that the action of the previous board had any bearing upon your action. If the previous action was just, why did you not reenact the same rates? If it was unjust, why do you attempt to use it to support your position?

This company asked for a \$5 per month hydrant rate. The budget was framed on a basis of \$2.50 per month, with an estimated installation of 4,000 hydrants. The hydrants now installed exceed 4,000. This company, in the performance of its duty, will install additional hydrants where it can render service with the mains now in existence, but it must be compensated for the use of the same. This company will continue to install water services where it now has mains.

You have been informed by this company that the properties now owned by it are capable of being developed to supply this city with at least 125,000,000 gallons of water per day. This statement has recently been afforded substantial verification by a statement made by Mr. Grunsky to the effect that they were capable of development so as to supply 109,000,000 gallons per day. You have repeatedly been informed that we would extend our mains and increase the water supply if we could be assured of safety for the capital invested, with a reasonable return on the investment. With these facts before you, was it fair for you to issue a statement to voters naming seven "conditions which make it imperative that the city should own its water supply," not one of which contained the whole truth?

As framed these conditions were, at best, but half truths and conveyed a false impression as to the water situation.

We repeat the words of a former communication:

We ask for your cooperation in maintaining, extending, and improving the property upon which the city depends for its water supply. * * * It will be our hope that the company, which for many years has been the subject of bitter hostility, may be conducted in a manner so honorable and efficient as to deserve and receive commendation, thus enabling the officials and employees to devote themselves strictly to the business of furnishing an abundant supply of water, and to ultimately obtain low rates for consumers and security for investing shareholders.

With the hope that it will tend to establish the relationship that should exist between the city and the company, we beg to advise that on or about January 10, 1909, we expect to close our books for the calendar year 1908, and beg that you will name two chartered accountants, one of whom, at our expense, we will select to audit our accounts, and we will furnish you with a copy of his report. We

invite you to name five supervisors from whom this company will select two to be placed upon its board of directors at the next annual meeting. We will meet you more than half way in any reasonable effort to create a foundation for harmonious cooperation.

Respectfully,

SPRING VALLEY WATER COMPANY,
By W. B. BOURN, *President*.

DECEMBER 30, 1908.

To the Water Rates Committee of the Honorable the Board of Supervisors of the City and County of San Francisco.

GENTLEMEN: We beg to further acknowledge your letter of December 9. Referring to your question:

Do you wish to sell the properties of the Spring Valley Water Company, now used in supplying the city and county of San Francisco, to the city and county?

We beg to inform you that we have no wish to sell, but that we have every willingness to sell the properties to the city and county of San Francisco at a fair valuation. We beg to refer you to our letter to the board of supervisors dated October 2, 1908, and to the published statement of the company. Any tentative valuation suggested by the supervisors has, in our opinion, been far below the value of the property, and it would be of no avail to name a price unless it met with the approval of the voters.

It has been our hope that this entire matter would shape itself so that you would recognize the true value of our properties, and that with your cooperation the voters of San Francisco would learn their value. We accept the result of the recent election as an expression of the desire of the municipality to own its water supply.

To arrive at definite figures which will be acceptable to both parties may not be without difficulty, considering the nature of the transaction. The properties of this company will not be sold below their fair value, and you have expressed a desire to purchase them at not only a fair value, but "at such a price as the city would be justified in paying therefor."

Referring to your suggestion that this matter be placed before the shareholders, we beg to state that we will be glad to act upon it, reserving, however, the privilege, which we also deem a duty, of making such recommendations as we think proper.

In further reply to your letter, we beg to state that we are informed and believe that, under the constitution of the State of California, under whose authority and protection this company rests, the city and county of San Francisco will be unable to enter into competition with it, and that the properties of the Spring Valley Water Company can not be "taken or damaged without just compensation," and, therefore, no shareholder need view with alarm the suggestion that the city will proceed to construct its own works.

On behalf of the shareholders of the company we feel entirely justified in expressing their sincere willingness to sell to the city and county of San Francisco the properties of this company, now used in supplying water to the city and county of San Francisco, at a fair and reasonable valuation.

Respectfully,

SPRING VALLEY WATER COMPANY,
By S. P. EASTMAN,
Assistant to the President.

Doctor GIANNINI. I should like to submit the ordinance passed by the board of supervisors, soliciting offers of sale, and the answers of the company, and certain letters.

The CHAIRMAN. They will be incorporated.

(The papers referred to are as follows:)

Bill No. 587.—Ordinance No. 505.

[New series.]

Soliciting offers for the sale to the city and county of San Francisco of any existing public utility, to wit: A system of water supply and works for supplying water to said city and county and its inhabitants, or any portion thereof; expressing the determination of the board of supervisors to consider any offers that may be made for the sale of such public utility, directing the clerk of this board of supervisors to give notice by publication that such offers are solicited and will be considered, this ordinance being the second of a series of ordinances to be adopted by the board of supervisors designed to secure the public utility named.

Be it ordained by the people of the city and county of San Francisco as follows:

SECTION 1. The board of supervisors does hereby solicit offers for the sale to the city and county of San Francisco of any existing public utility, to wit: A system of water supply and works for supplying water to said city and county and its inhabitants, or any portion thereof, and any owner or owners of such system of water supply and works are hereby invited to submit proposals or offers in writing to the board of supervisors for the sale of the same to the city and county of San Francisco, and such proposals shall be filed with the clerk of said board at any time within sixty days from the date of passage of this ordinance. And it is hereby announced and declared to be the purpose and intention of said board of supervisors to consider any and all proposals or offers that may be made for the sale of said described public utility to the said city and county before submitting propositions to the electors for the acquisition by original construction or condemnation of said described public utility, in order that the electors may have the benefit of acquiring the same at the lowest possible cost thereof.

SEC. 2. The clerk of the board of supervisors is hereby directed to publish for the period of thirty days a notice in substantially the following form:

Notice. Soliciting offers for the sale of any existing public utility, to wit: A system of water supply and works to the city and county of San Francisco.

OFFICE OF THE CLERK OF THE BOARD OF SUPERVISORS,
CITY AND COUNTY OF SAN FRANCISCO,
_____, _____, 1908.

To all owners of any existing public utility, to wit: A water supply and works for supplying water to the city and county of San Francisco and its inhabitants or any portion thereof.

You are hereby solicited and invited to submit to the board of supervisors of the city and county of San Francisco, on or before the _____ day of _____, 1908, an offer or offers in writing to sell to the said city and county any existing public utility, to wit: A system of water supply and works for supplying water to said city and county and its inhabitants, or any portion thereof, and that said board of supervisors will consider any and all such offers that may be submitted.

That if you should fail or refuse to make such offer or offers, then it is the intention of the board of supervisors to continue to conduct such proceedings as may be necessary to submit to the voters of said city and county a proposition or propositions for the acquisition by original construction or condemnation of the public utility named herein, to wit: A system of water supply and works for supplying water to said city and county and the inhabitants thereof.

This notice is given in compliance with the provisions of the charter of the city and county of San Francisco and of ordinance No. _____ (new series), adopted _____, 1908, and approved _____, 1908, and your attention is called to said ordinance for further particulars.

SEC. 3. The clerk of said board is hereby directed to cause a copy of the aforesaid notice to be personally served upon any known owner of any existing public utility described herein, with a request that this board be informed at an early date as to the intention of such owner to submit an offer as solicited by such notice and this ordinance.

SEC. 4. In the event of a failure to receive any offer to sell to the city and county the herein described existing public utility, the board of supervisors hereby declares its intention of continuing to conduct such proceedings as may be necessary to submit to the voters of said city and county a proposition or propositions for the acquisition by original construction or condemnation of the public utility herein named.

SEC. 5. This ordinance is the second of a series of ordinances to be adopted by the board of supervisors relating to and designed to secure the acquisition, construction, and completion of the public utility named herein.

SEC. 6. This ordinance shall take effect immediately.

In board of supervisors, San Francisco, July 13, 1908.

After having been published five successive days, according to law, taken up and finally passed by the following vote: Ayes: Supervisors Bancroft, Booth, Broderick, Center, Comte, Connolly, D'Ancona, Giannini, Hocks, Jennings, Johnston, McAllister, McLeran, Murdock, Murphy, Payot, Pollok, Rixford.

JOHN E. BEHAN, *Clerk.*

Approved, San Francisco, July 14, 1908.

EDWARD R. TAYLOR,
Mayor and ex officio President of the Board of Supervisors.

JULY 23, 1908.

Capt. A. H. PAYSON,

President Spring Valley Water Company, San Francisco, Cal.

DEAR SIR: Herewith is delivered to you a certified copy of ordinance No. 505 (new series) of the board of supervisors of the city and county of San Francisco, entitled "Soliciting offers for the sale to the city and county of San Francisco of any existing public utility, to wit: A system of water supply and works for supplying water to said city and county and its inhabitants, or any portion thereof, expressing the determination of the board of supervisors to consider any offers that may be made for the sale of such public utility, directing the clerk of this board of supervisors to give notice by publication that such offers are solicited and will be considered, this ordinance being the second of a series of ordinances to be adopted by the board of supervisors designed to secure the public utility named," passed July 13, 1908, and approved July 14, 1908; and also a certified copy of a notice now being published in the Evening Post, the official newspaper of the city and county of San Francisco, "Soliciting offers for the sale of any existing public utility, to wit: A system of water supply and works to the city and county of San Francisco."

I am directed by said ordinance No. 505 (new series) to request you to inform the board of supervisors of the city and county of San Francisco, through this office, at an early date, as to your intention to submit an offer as solicited by such notice and this ordinance, and this request is hereby accordingly made.

Yours, truly,

JOHN E. BEHAN,
Clerk Board of Supervisors of the City and County of San Francisco.

CITY AND COUNTY OF SAN FRANCISCO,

State of California, ss:

Martin Welch, of the city and county of San Francisco, State of California, being first duly sworn, deposes and says as follows:

That he is a resident of the city and county of San Francisco, State of California, and over the age of 21 years.

That he is the duly appointed, qualified, and acting sergeant-at-arms of the board of supervisors of the city and county of San Francisco, State of California.

That on the 30th day of July, 1908, he personally served upon A. H. Payson, president of the Spring Valley Water Company, a corporation, a certified copy of Ordinance No. 505 (new series) of the board of supervisors of the city and county of San Francisco, and also a copy of a notice soliciting offers for the sale of any existing public utility, to wit: A system of water supply and works to the city and county of San Francisco.

MARTIN L. WELCH,
Sergeant-at-Arms of the Board of Supervisors of the City and County of San Francisco, State of California.

Subscribed and sworn to before me this 30th day of July, 1908.

JOHN E. BEHAN,
Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

CITY AND COUNTY OF SAN FRANCISCO,

State of California, ss:

Martin Welch, of the city and county of San Francisco, State of California, being first duly sworn, deposes and says as follows:

That he is a resident of the city and county of San Francisco, State of California, and over the age of 21 years.

That he is the duly appointed, qualified, and acting sergeant-at-arms of the board of supervisors of the city and county of San Francisco, State of California.

That on the 29th day of July, 1908, he personally served upon J. M. Duke, secretary of the Spring Valley Water Company, a corporation, a certified copy of Ordinance No. 505 (new series) of the board of supervisors of the city and county of San Francisco, and also a copy of a notice soliciting offers for the sale of any existing public utility, to wit: A system of water supply and works to the city and county of San Francisco.

MARTIN L. WELCH,

Sergeant-at-Arms of the Board of Supervisors of the City and County of San Francisco, State of California.

Subscribed and sworn to before me this 30th day of July, 1908.

JOHN E. BEHAN,

Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

CITY AND COUNTY OF SAN FRANCISCO,

State of California, ss:

Martin Welch, of the city and county of San Francisco, State of California, being first duly sworn, deposes and says as follows:

That he is a resident of the city and county of San Francisco, State of California, and over the age of 21 years.

That he is the duly appointed, qualified, and acting sergeant-at-arms of the board of supervisors of the city and county of San Francisco, State of California.

That on the 29th day of July, 1908, he left at the office of the Spring Valley Water Company, a corporation, No. 375 Sutter street, San Francisco, Cal., a certified copy of ordinance No. 505 (new series) of the board of supervisors of the city and county of San Francisco, and also a copy of a notice soliciting offers for the sale of any existing public utility, to wit: A system of water supply and works to the city and county of San Francisco.

MARTIN L. WELCH,

Sergeant-at-Arms of Supervisors of the City and County of San Francisco, State of California.

Subscribed and sworn to before me this 30th day of July, 1908.

JOHN E. BEHAN,

Clerk of the Board of Supervisors of the City and County of San Francisco, State of California.

RELATING TO ACQUISITION OF WATER SUPPLY—COMMUNICATION FROM SPRING VALLEY WATER COMPANY.

The following communication from the Spring Valley Water Company, in response to ordinance No. 505 (new series) of the board of supervisors, soliciting an offer for the sale of the existing water supply, was received, read, and referred to the public-utilities committee:

EXECUTIVE DEPARTMENT, SPRING VALLEY, WATER COMPANY,
375 Sutter Street, San Francisco, Cal., September 11, 1908.

To the honorable the Board of Supervisors of the City and County of San Francisco.

GENTLEMEN: We beg to acknowledge receipt of your resolution No. 505 (new series), requesting that this company submit a price at which it will sell its property to the municipality.

Before this action was taken you passed a resolution declaring that the Hetch Hetchy supply was a desirable one for San Francisco, and you declined to include the plant of this company in the property which you declared it desirable that the city should acquire.

The charter provides that before you acquire a public utility you shall solicit offers of sale of any existing utility. We regard your resolution requesting this company to submit a price as a mere formal compliance with this charter requirement.

Assuming that the resolution declaring in favor of the desirability of the Hetch Hetchy supply, in which you declined to include the property of this company, was passed by you after a full investigation, it indicates that the municipality does not want to buy the property of this company at its fair value. If, however, you do really wish to acquire its property, it is unfortunate that your action has necessarily tended to depreciate and minimize its value in the public mind. Under these circumstances the company can not be blamed for feeling satisfied that any negotiation looking to the sale of the property to the city would be fruitless, and for believing further that, until your attitude undergoes a change, the electors will refuse to ratify the purchase at any price which the stockholders will be willing to accept.

Conflicting statements have been made regarding the water development of which the properties of the company are capable. This is a question that vitally affects value, and, therefore, any proposition of sale that may be made to the municipality will be in such shape as to remove any question of fact concerning the vital issue, and to that end will fix a minimum daily delivery.

Furthermore, it has not been possible in the time fixed by your resolution to arrive at a price at which the company will guarantee a stated development from the properties now owned by it, as, for instance, the delivery of 110,000,000 gallons or more daily (equal to more than three times the present daily consumption).

It may be of interest to you to know that the company is negotiating for, and feels warranted in stating that it will obtain, an option on a Sierra water supply, and also an option for the delivery of more than 250,000,000 gallons daily from that supply into its system at Pleasanton.

This Sierra supply is supported by a perfect and unquestioned title.

Should the company make an offer, it will embrace an option to the city to include this Sierra supply in addition to the existing properties of the Spring Valley Water Company.

Respectfully,

THE BOARD OF DIRECTORS OF THE
SPRING VALLEY WATER COMPANY,
By J. M. DUKE, *Secretary*.

SAN FRANCISCO, *September 15, 1908.*

SPRING VALLEY WATER COMPANY,
375 Sutter street, San Francisco, Cal.

GENTLEMEN: Your communication of September 11, 1908, addressed to the board of supervisors, was presented to said board at its regular meeting on September 14, and was by said board referred to the committee on public utilities for consideration.

We acknowledge the receipt of your communication and reply thereto as follows:

The committee extremely regrets that your corporation has not seen fit to avail itself of the opportunity to submit an offer to sell to the city and county of San Francisco the system of water supply and works now supplying water to the city and to its inhabitants.

While it is to some extent true that the solicitation of an offer from you to sell such property was fulfilling a charter requirement, nevertheless beneath the mere formality there exists on the part of the individual members of the board and the members of this committee in particular an earnest desire to acquire your properties at not merely a reasonable value, but at such a price as the city would be justified in paying therefor.

We think that you do the officials of the city a great injustice in assuming that the municipality does not want to buy the property of this company at its fair value. This unwarranted assumption appears to be based upon an alleged action of the board in declaring in favor of the desirability of a Hetch Hetchy supply in which we declined to include the property of this company.

While no explanation of this action is necessary, we wish to call your attention to the provision of the charter that requires that before the city can acquire a public utility of this kind it must obtain plans and estimates of cost of such utility by original construction and indicate a source of supply.

The resolution referred to was therefore essential to the plan of acquiring your property, and to have included your property in the same ordinance might have resulted in invalidating the procedure taken looking toward the securing of a municipal water supply.

We therefore feel that your attitude in declaring that any negotiations looking to the sale of the property to the city would be fruitless is founded on a misconception of the legal obligations imposed by law on the board of supervisors. Certain it is that no action thus far taken by this board was intended to depreciate and minimize the value of your property in the public mind, and the attitude striven to ever be maintained by the board has been one of an impartial and disinterested body, ready to do equal justice to yourselves and the electors of the city and county. Our attitude in this respect, we beg to assure you, will undergo no change.

We note in this connection that you are contemplating submitting an offer to sell to the city and county much more property than is embraced in the terms of the ordinance in that the price will be for a stated development three times the present consumption and also will embrace an option to the city to include a Sierra supply.

It is our earnest hope that should you make an offer to sell your properties to the city and county you will confine such proposition to that described in the ordinance.

We beg to remind you that the proceedings pending involve the creation of a bonded debt for a large sum and that it is essential that such proceedings should be conducted in such manner that the validity of a bond issue can not be questioned. Any foreign matter interpolated in these proceedings would also tend to destroy the object that you deem so essential, namely, the acquisition of your property at a fair valuation.

Therefore should you be desirous of complying with the request of the board of supervisors it will be necessary to confine your offer to the property which constitutes an existing utility as that term is used in the charter.

We bespeak for such an offer from you a most careful and immediate consideration.

Yours, truly,

A. H. GIANNINI.
D. C. MURPHY.
RALPH McLERAN.

OFFICE OF THE PRESIDENT, EXECUTIVE DEPARTMENT
SPRING VALLEY WATER COMPANY, 375 SUTTER STREET,
San Francisco, Cal., September 18, 1908.

To the public utilities committee of the honorable board of supervisors of the city and county of San Francisco, and A. H. Giannini, D. C. Murphy, and R. McLeran, members of said committee.

GENTLEMEN: Referring to your letter of September 15, 1908: You seem to have the impression that our letter to you said, in effect, that should we make an offer of sale of the Spring Valley property to the city and county it would be so coupled with an option on a Sierra supply as to require the acceptance or rejection of both. This was not intended. Nor do we think the language of our letter susceptible of that construction. Our offer, if we make one, will be in strict compliance with the charter so far as the existing utility is concerned.

We feel warranted in stating that we will obtain an option on a Sierra supply. It will be obtained without cost to us and will impose no obligations. We quote from our letter of September 11:

"Should the company make an offer, it will embrace an option to the city to include this Sierra supply in addition to the existing properties of the Spring Valley Water Company."

This option, in the event that the city shall purchase our property, will be turned over to the city without cost, and if it does not feel inclined to avail of it, it need not do so.

On the other hand, if, upon investigation—and there has never been any investigation of this Sierra supply by the representatives of the city—it shall be deemed advisable to avail of the option, that course may be pursued. In other words, the city will get for nothing an option on a supply the title to which is unquestioned, and this option will impose no obligation whatever upon the city.

As we stated in our letter of September 11, we thought the above information would be of interest to you.

Yours, respectfully,

SPRING VALLEY WATER COMPANY,
By J. M. Duke, Secretary.

LETTER FROM SUPERVISORS TO SPRING VALLEY WATER COMPANY.

On December 3 a letter was received from W. H. Bourn, president of the Spring Valley Water Company, offering to place two members of the board of supervisors upon the board of directors of the aforesaid company, and expressing the hope that there might be cooperation between the city and the corporation named through which rates could be fixed that would be satisfactory to all parties. In reply thereto the water-rates committee of the board transmitted the following communication:

SAN FRANCISCO, December 9, 1908.

SPRING VALLEY WATER COMPANY,
375 Sutter Street, San Francisco, Cal.

GENTLEMEN: We beg to acknowledge receipt of your letter of the 3d instant, signed by W. H. Bourn, president.

One thing your letter makes clear, and that is that there seems very little hope of our agreeing on the fixing of rates.

The Hetch Hetchy election, to which you refer, must have convinced you, as it has convinced us, of the determination of the people of this city to acquire, own, and operate their own waterworks. They have decided by a vote of 6 to 1 in favor of Hetch Hetchy Valley and Lake Eleanor as sources of supply. It is the belief of many that they will also favor the purchase of the properties of the Spring Valley Water Company if the properties are offered at a fair price and offered promptly. If an offer to sell your properties is not received within a reasonable time your silence on the subject might be regarded as meaning that you do not wish to sell. In that event the people may decide to go ahead with independent construction of storage and distributing systems to be used in connection with the supplies from Hetch Hetchy and Lake Eleanor.

The wishes of the people as expressed at the election November 12, 1908, are regarded by us as a mandate to proceed as speedily as is consistent with thoroughness with all plans, having for their object the ownership of waterworks by the municipality. Such being the case, we do not favor any action that might have a tendency to perpetuate private ownership, thus defeating the will of the people; therefore this committee does not think that the presence of two supervisors on the board of directors of the Spring Valley Water Company would be in the interest of public policy, and will therefore recommend against it.

Reduced to a simple statement, the position of the board of supervisors is as follows: To proceed without unnecessary delay to the purchase or construction of a waterworks to be owned and managed by the municipality. In accordance with the provisions of Ordinance No. 505 (new series), you were so notified. You were given opportunity to offer your properties for sale to the city if you so desired. On September 15, 1908, the public utilities committee directed your attention to Ordinance No. 505 (new series), affording you another opportunity to negotiate with the city.

At this time the water-rates committee asked the question, Do you wish to sell the properties of the Spring Valley Water Company now used in supplying water to the city and county of San Francisco to the city and county?

We respectfully request that you place this matter before your stockholders in such a way that every stockholder in your company may have ample opportunity to decide what course will be best, in view of all the circumstances, for the company to pursue.

Yours, truly,

JAMES A. JOHNSTON,
D. C. MURPHY,
*Water Rates Committee of the Board of Supervisors of the
City and County of San Francisco.*

The receipt of the foregoing communication was acknowledged by the following letter from the Spring Valley Water Company:

SAN FRANCISCO, CAL., December 10, 1908.

Messrs. JAMES A. JOHNSTON and D. C. MURPHY,
Water Rates Committee of the Board of Supervisors, San Francisco, Cal.

DEAR SIRS: I beg to acknowledge receipt of your letter of the 9th instant, addressed to the Spring Valley Water Company.

President Bourn is absent from the city. The matter will be taken up by him on his return.

Respectfully, yours,

J. M. QUAY, Vice-President.

RELATIVE TO THE ACQUISITION OF A MUNICIPAL WATER SUPPLY.

The following communication was received, read, and ordered referred to the water rates committee:

[Communication from the Spring Valley Water Company relative to the sale of its plant to the city.]

DECEMBER 30, 1908.

To the Water Rates Committee of the honorable the Board of Supervisors of the city and county of San Francisco.

GENTLEMEN: We beg to further acknowledge your letter of December 9. Referring to your question:

"Do you wish to sell the properties of the Spring Valley Water Company, now used in supplying the city and county of San Francisco, to the city and county?"

We beg to inform you that we have no wish to sell, but that we have every willingness to sell the properties to the city and county of San Francisco at a fair valuation. We beg to refer you to our letter to the board of supervisors, dated October 2, 1908, and to the published statement of the company. Any tentative valuation suggested by the supervisors has, in our opinion, been far below the value of the property, and it would be of no avail to name a price unless it met with the approval of the voters.

It has been our hope that this entire matter would shape itself so that you would recognize the true value of our properties, and that with your cooperation the voters of San Francisco would learn their value. We accept the result of the recent election as an expression of the desire of the municipality to own its water supply.

To arrive at definite figures which will be acceptable to both parties may not be without difficulty, considering the nature of the transaction. The properties of this company will not be sold below their fair value, and you have expressed a desire to purchase them at not only a fair value, but "at such a price as the city would be justified in paying therefor."

Referring to your suggestion that this matter be placed before the shareholders, we beg to state that we will be glad to act upon it, reserving, however, the privilege, which we also deem a duty, of making such recommendations as we think proper.

In further reply to your letter, we beg to state that we are informed and believe that, under the constitution of the State of California, under whose authority and protection this company rests, the city and county of San Francisco will be unable to enter into competition with it, and that the properties of the Spring Valley Water Company can not be "taken or damaged without just compensation," and, therefore, no shareholder need view with alarm the suggestion that the city will proceed to construct its own works.

On behalf of the shareholders of the company we feel entirely justified in expressing their sincere willingness to sell to the city and county of San Francisco the properties of this company, now used in supplying water to the city and county of San Francisco, at a fair and reasonable valuation.

Respectfully,

SPRING VALLEY WATER COMPANY,
By S. P. EASTMAN,
Assistant to the President.

WASHINGTON, D. C., January 11, 1909.

HON. FRANK W. MONDELL,
*Chairman Public Lands Committee,
House of Representatives, Washington, D. C.*

SIR: In compliance with your request I hand you a tabulated statement showing the names, areas, conditions, and ownerships of the various sources near and remote from which it is possible to draw a water supply for San Francisco. It will be observed that all supplies and sources except the one selected are in corporate ownership and are in part used for supplying existing towns, industries, etc.; also, that if the Tuolumne source, all of which is inside a park and inaccessible by reason of altitude and snow, except for about four months each year, shall be in the future subject to pollution by campers, what must be the degree of pollution of other areas covered with human activities of all kinds, with villages, towns, and barnyards, etc., situated at lower and accessible altitudes and not subject to the safe conditions imposed by nature on the Tuolumne? To impose upon San Francisco the penalty of forfeiting an expenditure of over \$115,000, made to secure a supply open under the law as to selection, and under conditions legally and properly required by the Government for the protection

of public interests, will simply result in throwing that municipality bound and helpless at the mercy of the corporation now unable to supply this increasing necessity.

It was stated by one of the members of the committee that the people of San Francisco were not given an opportunity to select a source and that the Lake Eleanor and Hetch Hetchy was the only one presented to them. It will be readily recalled by you that one of the numerous conditions imposed by the honorable the Secretary of the Interior was that two-thirds of the electors should express their approval of this source. This necessitated a costly special election, and as a result a bitter struggle ensued between the people and company furnishing water to the city. During the campaign the company seized every opportunity by letters and through newspapers and circulars distributed at every voting place to acquaint the electors with the other sources, and notwithstanding this, the people by the overwhelming majority of six to one indicated the source to which we are now endeavoring to perfect our rights.

Respectfully submitted.

MARSDEN MANSON,
City Engineer, San Francisco, Cal.

[Telegram.]

SAN FRANCISCO, CAL., January 19, 1909.

A. H. GIANNINI,
New Willard, Washington, D. C.:

Please present to the Public Lands Committee the following resolution adopted by our council:

"Whereas the city and county of San Francisco is endeavoring to obtain from the Congress of the United States a confirmation of certain rights granted by the Secretary of the Interior in and to certain reservoir sites in Hetch Hetchy Valley and at Lake Eleanor as a future source of water supply: Therefore

"Resolved by the council of the city of Alameda, That we indorse the efforts of the city and county of San Francisco to obtain the desired legislation from Congress, and we request our Representative in Congress, Hon. J. R. Knowland, to aid in this matter, and that he present this memorial to the Public Lands Committee of the House."

Adopted and passed by the council of Alameda, Cal., this 18th day of January, 1909.

E. K. TAYLOR,
Mayor of Alameda.

[Telegram.]

SAN FRANCISCO, CAL., January 19, 1909.

A. H. GIANNINI,
New Willard, Washington, D. C.:

I transmit herewith to you for presentation to the Public Lands Committee a copy of Oakland city council resolution No. 34672, adopted by said council in Oakland, Cal., January 18, 1909:

"Whereas the Interior Department of the United States Government on May 11, 1908, granted to the city and county of San Francisco certain reservoir sites and right of way at Lake Eleanor and Hetch Hetchy Valley in the Yosemite National Park; and

"Whereas there is now pending before the Congress of the United States a resolution ratifying and confirming said grant and permitting the Department of the Interior to exchange certain lands in said sites for the purpose of carrying out the terms of said grant of the Interior Department; and

"Whereas the supply of water obtainable by the use of said reservoir sites and right of ways is apparently ample enough to supply not alone San Francisco, but also all cities surrounding San Francisco Bay, and said grant is one in which the city of Oakland is interested as well as the city of San Francisco; now, therefore,

"Resolved, That the council of the city of Oakland hereby indorses the bill now pending before the Public Lands Committee in Congress, in the form as recommended by the Secretary of the Interior, confirming the grant of privileges made by the Interior Department to San Francisco for reservoir sites in Hetch Hetchy Valley and at Lake Eleanor in the Yosemite National Park, and strongly urges favorable action thereon by the Public Lands Committee and by Congress: *Further resolved*, That a copy of this resolution be telegraphed to the chairman of the Public Lands Committee of the House of Representatives, Washington, D. C."

FRANK R. THOMPSON, *City Clerk.*

[Telegram.]

SACRAMENTO, CAL., January 18, 1909.

PUBLIC LANDS COMMITTEE IN CONGRESS,
Washington, D. C.:

The following resolution was this day adopted by the legislature of the State of California:

"Whereas there is pending in the Congress of the United States a joint resolution confirming a certain grant of privileges made by the Secretary of the Interior Department to the city and county of San Francisco under date of May 11, 1908, whereby certain applications for reservoir sites in the Hetch Hetchy Valley and at Lake Eleanor, in the Yosemite National Park and forest reserves, be used for a source of water supply by said city and county, conditioned upon certain stipulations and agreements made by the parties thereto, were approved by said Secretary of the Interior Department: Therefore be it;

"Resolved by the senate and the assembly jointly, That our Senators in Congress be instructed and our Members in Congress be requested to use all honorable means to secure the prompt adoption by Congress of the joint resolution referred to in the preamble of this resolution."

LEWIS A. HALBORN,
Secretary of Senate.

The CHAIRMAN. The following letter will be printed in the record:

Copy of resolution passed at the annual meeting of the members of the American Alpine Club held in Baltimore January 2, 1909:

Resolved, That the American Alpine Club, an organization devoted to scientific exploration and study of the higher mountain elevations, desires to record its earnest protest against the proposed taking of the Hetch Hetchy Valley in California as the source of the water supply of the city of San Francisco. In these days when so much is being done to preserve our natural resources and to deliver to futurity undamaged as large a share as is possible of our great heritage, both scenic and material, the project of destroying nearly one-half of one of the great national parks of the country is deeply to be deplored. We would urge respectfully upon Congress that there is no warrant for the destruction of this marvelous region; and that with the numerous other sources of water supply which are available for San Francisco appropriate legislation should be enacted at once to forever secure to the people of our country their paramount rights in the whole of a district which was set aside as a national park nearly twenty years ago.

HENRY G. BRYANT, *Secretary.*

(At 5 o'clock and 3 minutes p. m. the committee adjourned.)

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